United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

74-1043

United States Court of Appeals

For the Second Circuit.

RICHARD A. GORDON, individually and as President of INDEPENDENT INVESTORS PROTECTIVE LEAGUE, an unincorporated association, and in behalf of the membership thereof and in behalf of all persons similarly circumstanced,

Plaintiffs-Appellants,

-against-

NEW YORK STOCK EXCHANGE, INC., AMERICAN STOCK EXCHANGE, INC. and MERRILL, LYNCH, PIERCE, FENNER & SMITH, INC. and BACHE & COMPANY, INC., individually and as representatives of all member firms of the NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE,

Defendants-Appellees.

On Appeal From The United States District Court For The Southern District Of New York

APPELLANTS' APPENDIX

BADER AND BADER
Attorneys for Plaintiffs-Appellants
274 Madison Avenue
New York, N.Y. 10016
532-6860

Dick Bailey Printers • P.O. Box X, Staten Island, N.Y. 10302 • Tel.: (212) 447-5358

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

Page

DOCKET ENTRIES

RICHARD A. GORDON INDIVIDUALLY, ETC. VS. N.Y. STOCK EXCHANGE INC. ET-AL

1 or 2-71 - Filed Complaint. Issued Summons.

4-30-71 - Filed stipulation and order extending all defendants time to answer complaint to 6/14/71. So ordered. Motley, J.

6-21-71 - Filed stip and order that the time for defts' to answer complaint is ext. from 6-14-71 to 7-20-71 and the time for pltff. to move, as to whether the action is to be maintained as a class action and, if so, the membership of the class, is ext. from 6-1-71 to 7-20-71. So ordered; Gurfein, J.

7-7-71 - Filed Affidavit of John E. Lawler in opposition to pltf's. motion for def. judgment.

7-7-71 - Filed Answers of Defendants Tokyo Shipping Co. Ltd. and Gannet Freighting, Inc. to Plaintiff's Interrogatories.

7-20-71 - Filed stipulation and order extending defendants time to answer complaint to 9/20/71; further stipulated that the pltf's. time to move for a determination under Rule 23(c)(1) is extended to 9/20/71. So ordered. Frankel, J.

8-24-71 - Filed summons with marshal's ret. SERVED:
Merrill, Lynch, Pierce, Fenner & Smith, Inc. on 4/12/71.
Bache & Co. Inc. by Melvyn J. Falis on 4/8/71.
American Stock Exchange by H. Vernon Lee, Jr. on 4/22/71.
New York Stock Exchange by Richard Drew on 4/12/71.

1-26-72 - Filed Stip. & Order extending time to answer to 3/20/72.

3-20-72 - Filed Stip & Order extending time to answer to 5/22/72, etc. So Ordered Metzner J.

3-24-72 - Filed Dft. Merrill Lynch, Pierce Fenner & Smith Inc. Change of address.

5-23-72 - filed stipulation and order extending defendants time to answer complaint to 7/21/72; further stipulated that the pltf's. time to move for class action determination is extended to 7/21/72. So ordered. Frankel, J.

7/24/72 - Filed Stipulation & Order that time for defts to answer re: complaint is ext. to Sept. 21, 1972. Brieant J.

8/22-72 - Filed stipulation and order extending defendants time to answer complaint to 9/28/72; further stipulated that the time to move for a determination as to class action is also extended to 9/28/72. So ordered. Lasker, J.

9-28-72 - Filed ANSWER of Merrill, Lynch, Pierce, Fenner & Smith to complaint.

9-28-72 - Filed ANSWER of New York Stock Exchange Inc. to complaint.

10-2-72 - Filed Notice of Motion for Class Action Determination Ret. before Lasker, J. ROOM 2903 on 10/20/72 at 10 AM.

10-2-72 - Filed Memorandum in support of motion for class action determination.

10-3-72 - Filed ANSWER of American Stock Exchange Inc. to complaint.

10-19-72 - Filed Stip & Order that return date for motion re: class action determination is adj. from 10-20-72 to 11-17-72. The depositions of defts are adj. without a date subject to fixation of new times on five days' notice. So Ordered - Lasker J.

9-1-72 - Filed stip & order that counsel of deft American Stock Exchange Messers. Polk, & Wardell be replaced by Lord, Day & Lord. So Ordered Lasker J.

11-16-72 - Filed stipulation and order adjourning pltf's motion for class action determination now ret. 11/17/72 to 12/15/72. etc. So ordered. Lasker, J.

11-30-72 - Filed stipulation and order adjourning pltf's motion for a determination of class action to 12/29/72, etc. So ordered. Lasker, J.

12-4-72 - Filed Defendants' Affidavits in opposition to pltf's motion for class action determination.

12-4-72 - Filed Affidavit of Isaac Shapiro in opposition to pltf's. motion.

12-4-72 - Filed Memorandum in opposition to pltf's. motion for class action determination.

12-7-72 - Filed Notice of Motion RET. 12/29/72 at 10 AM re: dismiss, summary judgt.

12/7/72 - Filed Affidavit in support of defendants' motion to dismiss and for summary judgment. (by attys. for New York Stock Exchange.)

12-7-72 - Filed Memorandum in support of motion for summary judgment.

12-7-72 - Filed Affidavit in support of defendants' motion (Robert M. Bishop) to dismiss and for summary judgment. (for N.Y. Stock Exchange, Inc. and Bache & Co. Inc.) with one red portfolio of Exhibits.

12-7-72 - Filed Affidavit of John P. Foynes in support of defts'. motion for summary judgt.

1-2-73 - Filed Memorandum in opposition to defts'. motion to dismiss and for summary judgment.

5-10-73 - Filed Affidavit of Richard A. Gordon in opposition to motion to dismiss and for summary judgment.

6-8-73 - Filed stip and order that the pltff. may serve reply papers with respect to his pending motion for a class action before 6/4/73, So Ordered Lasker J.
Filed stip. and order that pltff's time to serve reply papers with respect to motion for a class action determination is extended to 7/5/73. So Ordered Lasker J.

12-4-73 - Filed memorandum OPINION No. 40,086 - Defendants' motion for summary judgment is granted. In view of our decision here, we do not consider pltff's motion for a class action determination. It is so ordered - Lasker, J. - mailed notice.

12-6-73 - Filed pltffs. notice of appeal, $5.00 from Order dtd. Dec. 4-73, granting summary judgment to the defts. mailed copies.

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD A. GORDON, Individually and as President of INDEPENDENT INVESTORS PROTECTIVE LEAGUE, an unincorporated association, and in behalf of the membership thereof and in behalf of all persons similarly circumstanced,

Plaintiff,

-against-

CIVIL ACTION

71 Civ 1792

NEW YORK STOCK EXCHANGE, INC.,
AMERICAN STOCK EXCHANGE, INC. and
MERRILL LYNCH PIERCE FENNER & SMITH, INC. and
BACHE & COMPANY, INC., Individually and as representatives of all member firms of the NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE,

Defendants.

COMPLAINT

CLASS ACTION

PLAINTIFF ALLEGES:

FIRST: At all times hereinafter mentioned plaintiff was, and still is, a citizen and resident of the STATE OF NEW YORK, doing business at 19 West 24th Street, New York, N. Y.

SECOND: Plaintiff is a purchaser of stocks through member firms of the New York Stock Exchange and American Stock Exchange.

THIRD: Plaintiff is President of the INDEPENDENT INVESTORS PROTECTIVE LEAGUE, an unincorporated association, having its' office and place of business at 19 West 24th Street, New York, N. Y. The said INDEPENDENT INVESTORS PROTECTIVE LEAGUE is composed of members who also are purchasers of stocks through

member firms of the New York Stock Exchange and American Stock Exchange.

FOURTH: Plaintiff, and the members of the INDEPENDENT INVESTORS PROTECTIVE LEAGUE are "small investors" purchasing stocks in amounts less than Five Hundred Thousand ($500,000) Dollars for each purchase.

FIFTH: This action is a Class Suit in behalf of plaintiff, individually, in behalf of the members of the INDEPENDENT INVESTORS PROTECTIVE LEAGUE and in behalf of the remaining members of the Class of "small investors" who purchase stocks listed on the New York Stock Exchange and American Stock Exchange in amounts less than Five Hundred Thousand ($500,000) Dollars for each purchase. It is believed that the members of this class amount to at least One Million (1,000,000) persons and the amount of commissions paid by these persons to member firms of the New York Stock Exchange or American Stock Exchange during the past six years amounted to at least Five Hundred Million ($500,000,000) Dollars.

SIXTH: The defendants NEW YORK STOCK EXCHANGE, INC., AMERICAN STOCK EXCHANGE, INC., MERRILL, LYNCH, PIERCE FENNER AND SMITH, INC. and BACHE & COMPANY, INC. are, on information and belief, corporations duly organized and existing under the laws of the State Of New York, having offices and places of business withim the territorial jurisdiction of the Southern District of New York.

SEVENTH: The defendants NEW YORK STOCK EXCHANGE, INC. and AMERICAN STOCK EXCHANGE, INC. represent the principal markets for equity securities in the United States. These organizations are, in effect, "public utilities" purportedly

providing honest auction market for the purchase and sale of stocks of American Business Corporations. The prices at which these securities are sold are purportedly arrived at by fair bargaining between buyers and sellers of these stocks.

EIGHTH: All trading performed on the NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE is done through the agency of "members" of the said exchanges. The number of these "members" is arbitrarily limited by the said NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE and any person, firm, corporation or association who desires trading privileges upon the said Exchanges must purchase a "seat" from an existing member at a price arrived at between the seller and purchaser.

NINTH: The said NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE are purportedly subject to regulation by the SECURITIES AND EXCHANGE COMMISSION. This regulation, however, does not affect Commission Charges or operations of the said Exchanges.

TENTH: In a recent Court Decision it has been held that the said NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE are subject to the Anti-Trust Laws of the United States.

ELEVENTH: This Court acquires jurisdiction of this suit by reason of the Constitution and Laws of the United States, in particular the Securities Act and the Anti-Trust Laws. The specific Anti-Trust Laws applicable to this case are 15 USC 1 and 15 USC 2 (The Sherman Act) and 15 USC 13 (The Robinson Patman Act) and plaintiff is a "person injured" as provided in 15 USC 15.

TWELFTH: The defendants MERRILL, LYNCH, PIERCE, FENNER AND SMITH, INC. and BACHE AND COMPANY, INC. are "members" of the NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE. These defendants are being sued herein individually and as representatives of all "members" of the aforesaid Exchanges.

THIRTEENTH: About 1968 the defendants BACHE AND COMPANY, INC. and MERRILL, LYNCH, PIERCE FENNER AND SMITH, INC. as well as all of the other "members" of the aforesaid Exchanges, instituted a "surcharge" for small investors purchasing less than One Thousand (1,000) shares of stock in any one trade. The aforesaid "members" by this device received, on information and belief, at least One Hundred Million ($100,000,000) Dollars in additional income by reason of these increased commission rates.

FOURTEENTH: In truth and in fact it is no more expensive to conduct a so-called "small trade" than a large trade. By the use of modern computer data-processing techniques a "small trade" can be performed quickly and expeditiously and with minimum cost. The real additional expense to the "member firms" of the so-called "small trade" is the expense of the so-called "Registered Representatives" of these"member firms" (in reality"Commission Salesmen" who expend considerable time in soliciting these accounts.

FIFTEENTH: In truth and in fact it is more expensive to consummate a "large trade". Such trade requires extensive negotiations and time.

SIXTEENTH: As a result of the above the aforesaid "surcharge" imposed by "member firms" upon "small investors" and the increased commissions charged by said "member firms" to said

"small investors" aee illegal and in violation of 15 USC 13 (The Robinson Patman Act). In addition the discounts given for "large trades" are likewise illegal and in violation of 15 USC 13. In addition these discounts constitute "unreasonably low prices" in violation of 15 USC 13a.

SEVENTEENTH: The defendants NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE likewise forbid the use of their facilities to any "non-member". In addition their rules and regulations prevent a division of commissions between "members" and "non-members". As a result organizations such as the plaintiff INDEPENDENT INVESTORS PROTECTIVE LEAGUE cannot offer trading facilities to their members. By means of the computerized trading methods developed by the plaintiff and the fact that the plaintiff INDEPENDENT INVESTORS PROTECTIVE LEAGUE need not utilize "Registered Representatives" as Commission Salesmen, the said League would be in a position to offer its' members substantial commission savings on stock trades. However, because of the present attitude on the part of the defendants NEW YORK STOCK EXCHANGE, INC. and AMERICAN STOCK EXCHANGE, INC., it is not able to do so. Such conduct on the part of the said defendants constitutes a violation of 15 USC 1 and 15 USC 2 (The Sherman Act), since the said Acts constitute a combination and conspiracy in restraint of trade and an attempt to create a monopoly in stock trading.

EIGHTEENTH: The said dafendants NEW YORK STOCK EXCHANGE, INC. and AMERICAN STOCK EXHCANGE, INC. together with the "members" thereof, of which the defendants MERRILL, LYNCH, PIERCE, FENNER

AND SMITH and BACHE AND COMPANY are representatives, intend, on April 5th, 1971, to further deteriorate the position of the "small investor" by permitting negotiated commission rates on all trades over Five Hundred Thousand ($500,000) Dollars while keeping the extra commission rates in effect for "small investors".

NINETEENTH: The aforesaid negotiated commission rates are illegal for the following reasons:

(a). The opportunity of negotiating commission rates, if granted to any customer, must be granted to call customers under the provisions of 15 USC 13. Therefore, if negotiated commission rates are to be allowed for large trades they must also be allowed for small trades.

(b). The negotiated commission rates would not reflect "due allowance" for any cost savings.

(c). The negotiated commission rates would, in effect, restrict trading to large traders such as institutions, mutual funds, and the like. This would have the effect of "freezing out" the small investor from the market and would force the investor to invest through mutual funds and the like. This would, in effect, give mutual funds (in reality profit-making organizations) preferred access to the securities markets in the United States in violation of the Anti-Trust Laws.

(d). The negotiated commission rates would further cause the securities markets to become "stores" offering fixed negotiated prices for the sale of securities rather than the present "auction market". The possibilities of manipulation and fraud that could be had in such case are endless.

NINETEENTH : SPECIAL JURISDICTIONAL ALLEGATIONS
(a) REQUIRED FOR CLASS ACTION LITIGATION

1- This Court acquires jurisdiction of this Cause of Action by virtue of the Securities Act of the United States and the Anti-Trust Laws of the United States.

2- The number of members of the classes involved in this action is as follows:

a- There are about One Hundred (100) member firms of the New York Stock Exchange and about One Hundred member firms of the American Stock Exchange.

b- There are about Fifty Million (50,000,000) small investors in the United States affected by this litigation.

3- There are common questions of law and fact involved in this litigation relating to the legality of the "surcharges imposed by the defendants NEW YORK STOCK EXCHANGE AND AMERICAN STOCK EXCHANGE and the legality of the "negotiated commission" rates for large trades to be instituted by the defendant Exchanges. There are also questions of law and fact in common with respect to the legality of the defendant Exchanges permitting trading utilizing their facilities only through "members". These questions predominate and are decisive over any questions involving only individual members of the Classes involved.

4- The plaintiff INDEPENDENT INVESTORS PROTECTIVE LEAGUE is the proper party to represent the Class on behalf of the "small investors" since it is the only organization specifically designed to protect small investors. The organization has, at present, less than One Hundred (100) members but it is expected that it will have over One Million (1,000,000) members before this litigation is terminated. All present members of the INDEPENDENT INVESTORS PROTECTIVE LEAGUE have authorized this litigation and agree to have their names listed as parties thereto if necessary.

5- It is adequate to serve only the defendants MERRILL LYNCH PIERCE FENNER & SMITH and BACHE & COMPANY because these defendants are the two leading member firms of the defendant Exchanges who intend to impose negotiated commission rates and who have charged small investors surcharges. These parties are adequate to represent the Class of said member firms.

6- It is impracticable to join all members of the Classes involved herein since there are Fifty Million (50,000,000) small investors in the United States and it further would be impractical to join One Hundred (100) member firms of the defendant exchanges.

7- The claims and/or defenses of the representative parties involved herein are typical of the claims and defenses of the class.

8- A class action is the only proper way to determine the present controversy.

9- The plaintiffs have met the requirements of Rules 23 (a) and 23(b) and Rule 23.2 of the Federal Rules of Civil Proceedure.

9- The plaintiffs agree to permit any member of the Classes involved herein to intervene in this action or will permit any member of the class of "small investors" to join in this action and contribute to the expenses thereof.

10- It is expected that the Court will make appropritate orders in this case to protect the interests of the Classes involved.

TWENTIETH: By reason of the illegal practices set forth in this Complaint the plaintiff and others similarly situated, have been seriously damaged for the following reasons as well as others, and, if the illegal practices are not terminated, will suffer further and irreparable damage in the future:

a. The plaintiffs have overpaid commissions in their purchases by reason of the imposition by the "member firms" of an illegal surcharge.

b. The plaintiffs will no longer have equal access to the securities markets in the same terms and conditions as mutual funds institutional investors.

c. The plaintiffs will be required to pay commissions to mutual fund managers and the like to have equal access to the securities markets and will lose discretionary control over their securities investments.

d. The plaintiffs will be deprived of a true auction market with respect to the purchase and sale of securities.

e. The plaintiffs will not have access to the securities markets on the same basis as "member firms" and will not be able to offer their members low cost securities purchase and sale service.

TWENTY-FIRST: With respect of many of the practices set forth herein plaintiff has no adequate remedy at law. With respect to the damage claims set forth therein plaintiff demands a Trial by Jury of all issues triable before a jury.

TWENTY-SECOND: WHEREFORE, PLAINTIFFS DEMAND:

a. A perpetual injunction restraining the defendants,

and all "members" of the defendant Exchanges, from putting the so-called "negotiated Commission Rates" in effect on April 5th, 1971.

b. A preliminary injunction restraining the defendants and all members of the defendant Exchanges, pending the trial of this action, from putting the so-called "negotiated commission rates" into effect on April 5th, 1971.

c. A mandatory injunction requiring the defendants NEW YORK STOCK EXCHANGE, INC. and AMERICAN STOCK EXCHANGE, INC. to permit the plaintiff INDEPENDENT INVESTORS PROTECTIVE LEAGUE, to conduct trading activities on the defendant Exchanges without having to purchase "seats" thereupon.

d. Damages in the sum of Five Hundred Million Dollars ($500,000,000) trebled to One Billion Five Hundred Million Dollars ($1,500,000,000) together with an attorney's fee of Ten Million Dollars ($10,000,000) together with interest and the costs and disbursements of this action.

e. As alternative relief, if the Court should decide that the defendants are entitled to permit negotiated commission rates that such negotiated rates be open to all investors and not merely to large investors.

f. A perpetual injunction restraining the defendants, andall "member firms" from continuing their discrimination in commission rates between large investors and small investors.

Yours, etc.
BADER AND BADER

By: ____________________
I. Walton Bader
Attorneys for Plaintiff
274 Madison Avenue
New York, N.Y. 10016
Telephone: (212) LE 2-6860.

ANSWER OF DEFENDANT NEW YORK STOCK EXCHANGE AND BACHE & CO., INC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

RICHARD A. GORDON, et al.,

Plaintiff, : 71 Civ. 1496

-against- : ANSWER

NEW YORK STOCK EXCHANGE, INC., et al.,

Defendants. :

- x

Defendants NEW YORK STOCK EXCHANGE, INC. (the "Exchange") and BACHE & COMPANY, INC. ("Bache") by their attorneys, Milbank, Tweed, Hadley & McCloy, for their answer to the complaint:

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs FIRST through FOURTH.

2. Deny each and every allegation contained in paragraph FIFTH except deny knowledge or information sufficient to form a belief as to those allegations stated to be based upon plaintiff's belief.

3. Admit the allegations contained in paragraph SEVENTH except deny that the Exchange and the AMERICAN STOCK EXCHANGE (the "Amex") are, in effect, "public utilities".

4. Deny each and every allegation contained in paragraph EIGHTH except admit that all trading of securities listed on the Exchange or the Amex is performed by respective members of those exchanges, that the number of said members is limited by the number of available memberships and that

membership is acquired by purchase in a competitive auction market.

5. Deny each and every allegation contained in paragraph NINTH and admit that the Exchange and the Amex are subject to regulation by the Securities and Exchange Commission (the "SEC").

6. Declare that they are not required to plead to the allegations of law pleaded in paragraph TENTH.

7. Deny each and every allegation contained in paragraph ELEVENTH.

8. Deny each and every allegation contained in paragraph TWELFTH except admit that defendants MERRILL, LYNCH, PIERCE, FENNER & SMITH, INC. ("Merrill, Lynch") and Bache are member organizations of the Exchange and the Amex and are purportedly sued individually and as representatives of an alleged class of "members" of the defendant exchanges.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph THIRTEENTH except admit that in or about December, 1968 the defendant exchanges, with the approval of the SEC, adopted rules providing for a volume discount for transactions involving more than one thousand (1,000) shares and that in or about April, 1970, the defendant exchanges, again with the approval of the SEC, adopted rules providing for an interim service charge to be imposed upon transactions of one thousand (1,000) shares of stock or less and that in or about March, 1972, the interim service charge was discontinued and a new commission rate schedule adopted, with the approval of the SEC and the Price Commission, incorporating a value-related volume discount.

10. Deny each and every allegation contained in paragraphs FOURTEENTH through SIXTEENTH.

11. Deny each and every allegation contained in paragraph SEVENTEENTH except admit that only members of the defendant exchanges may use the facilities of their respective exchanges.

12. Deny each and every allegation contained in paragraph EITHTEENTH except admit that in or about April, 1971, the defendant exchanges, pursuant to a directive issued by the SEC after a series of public hearings, adopted rules permitting the negotiation of commission rates on that portion of transactions in securities listed on the defendant exchanges in excess of Five Hundred Thousand Dollars ($500,000) and that in April, 1972 said rules were amended, pursuant to a request of the SEC, to permit negotiation of commission rates on that portion of transactions in listed securities in excess of Three Hundred Thousand Dollars ($300,000).

13. Deny each and every allegation contained in paragraph NINETEENTH.

14. Deny each and every allegation contained in paragraph NINETEENTH (a) except deny knowledge or information sufficient to form a belief as to the allegations respecting the membership of the Independent Investors Protective League or the authorization to institute suit purportedly granted by the members of said organization contained in paragraph 19(a)(4) and declare that defendants need not plead in response to the allegations contained in paragraph 19(a)(9) through 19(a)(10).

15. Deny each and every allegation contained in paragraphs TWENTIETH and TWENTY-FIRST.

FIRST DEFENSE

16. The complaint fails to state a claim upon which relief can be granted and this Court lacks subject matter jurisdiction over the controversy alleged.

SECOND DEFENSE

17. Pursuant to its self-regulatory duties under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.) the Exchange has adopted rules limiting membership and fixing minimum rates of commission and other charges, including the specific volume discount effective from December, 1968 to March, 1972, the interim service charge ("surcharge") effective from April, 1970 to March, 1972 and rules relating to negotiated commissions with respect to transactions in securities listed on the Exchange. All of the said rules are subject to review and revision by the SEC under Section 19(b) of the Exchange Act and such review jurisdiction is continuing to be exercised. By reason thereof neither the adoption of, nor the adherence to, said rules may be the subject of an antitrust claim because exclusive jurisdiction of the subject matter is vested in the SEC.

THIRD DEFENSE

18. The imposing of limitations on membership and the fixing of minimum rates of commission and charges, including the specific volume discount effective December, 1968 to March, 1972, and the surcharge effective from April, 1970 to March, 1972 and rules relating to negotiated commissions, by the Exchange are within the scope and carry out the purposes of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78a et seq.) and are therefore exempt from the operation of the antitrust laws.

FOURTH DEFENSE

19. The fixing of minimum rates of commission and charges, imposing limitations on membership and establishing the specific volume discount effective December, 1968 to March,

1972, and the rules relating to negotiated commissions by the Exchange were, and are, reasonable and justified and therefore not in contravention of the antitrust laws.

FIFTH DEFENSE

20. Since the Securities Exchange Act of 1934 (U.S.C. §§ 78a et seq.) provides for review and revision by the SEC of the Exchange's rules relating to membership, minimum rates of commission and other charges, primary jurisdiction of the subject matter of this action is vested in the SEC.

SIXTH DEFENSE

21. Plaintiff lacks standing to assert a claim under the antitrust laws either as President of the Independent Investors Protective League or on behalf of its members or on behalf of an alleged class of small investors and further lacks standing to sue individually because he has not been directly injured in his business or property by reason of anything forbidden in the antitrust laws.

SEVENTH DEFENSE

22. Any claim for damages which accrued more than four years prior to the commencement of this action is barred by the applicable statute of limitations (15 U.S.C. § 15b).

EIGHTH DEFENSE

23. By reason of the plaintiff's tardy assertion of the illegality of the Exchange rules and regulations with respect to the volume discount effective from December, 1968 to March, 1972 and the interim service charge instituted in April, 1970 and discontinued in March, 1972 and the payment

to the defendant member organizations of commissions and other charges, including the surcharge in accordance with the schedules established by the Exchange and defendants' reliance upon the apparent acquiescence of the plaintiff and the purported class, plaintiff and the alleged class are guilty of laches and are estopped from asserting any claim against these defendants.

NINTH DEFENSE

24. All the rules challenged herein were promulgated and adopted by the Exchange and adhered to by the member organizations pursuant to an order, request or the approval of the SEC and consequently the Exchange and the member organizations thereof should not be held liable for any violation of law occasioned therefor by reason of the good faith reliance by the defendants upon the authority and jurisdiction of the SEC.

WHEREFORE, defendants the Exchange and Bache, demand judgment dismissing the complaint with costs and disbursements.

Dated: New York, New York
September 28, 1972

MILBANK, TWEED, HADLEY & McCLOY

By ______________________
(a member of the firm)
1 Chase Manhattan Plaza
New York, N. Y. 10005
Attorneys for defendants New York Stock Exchange, Inc. and Bache & Company, Inc.

ANSWER OF DEFENDANT MERRILL, LYNCH, PIERCE, FENNER & SMITH INCORPORATED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - x

RICHARD A. GORDON, et al., :

Plaintiff, : 71 Civ. 1496

-against- : ANSWER

NEW YORK STOCK EXCHANGE, INC., et al., :

Defendants. :

- - - - - - - - - - - - - - - - - x

Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") by its attorneys, Brown, Wood, Fuller, Caldwell & Ivey, for its answer to the complaint:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs FIRST through FOURTH.

2. Denies each and every allegation contained in paragraph FIFTH except denies knowledge or information sufficient to form a belief as to those allegations stated to be based upon plaintiff's belief.

3. Admits the allegations in paragraph SIXTH of the complaint, except avers that Merrill Lynch is incorporated under the laws of the State of Delaware.

4. Admits the allegations contained in paragraph SEVENTH except denies that the New York Stock Exchange, Inc. (the "Exchange") and the American Stock Exchange (the "Amex") are, in effect, "public utilities".

5. Denies each and every allegation contained in paragraph EIGHTH except admits that all trading of securities listed on the Exchange or the Amex is

performed by respective members of those exchanges, that the number of said members is limited by the number of available memberships and that membership is acquired by purchase in a competitive auction market.

6. Denies each and every allegation contained in paragraph NINTH except admits that the Exchange and the Amex are subject to regulation by the Securities and Exchange Commission (the "SEC").

7. Declares that it is not required to plead to the allegations of law pleaded in paragraph TENTH.

8. Denies each and every allegation contained in paragraph ELEVENTH.

9. Denies each and every allegation contained in paragraph TWELFTH except admits that Merrill Lynch is a member organization of the Exchange and the Amex and is purportedly sued individually and as representative of an alleged class of "members" of the defendant exchanges.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph THIRTEENTH except admits that in or about December, 1968 the defendant exchanges, with the approval of the SEC, adopted rules providing for a volume discount for transactions involving more than one thousand (1,000) shares and that in or about April, 1970, the defendant exchanges, again with the approval of the SEC, adopted rules providing for an interim service charge to be imposed upon transactions of one thousand (1,000) shares of stock or less and that in or about March, 1972, the interim service charge

was discontinued and a new commission rate schedule adopted, with the approval of the SEC and the Price Commission, incorporating a value-related volume discount.

11. Denies each and every allegation contained in paragraphs FOURTEENTH through SIXTEENTH.

12. Denies each and every allegation contained in paragraph SEVENTEENTH except admits that only members of the defendant exchanges may use the facilities of their respective exchanges.

13. Denies each and every allegation contained in paragraph EIGHTEENTH except admits that in or about April, 1971, the defendant exchanges, pursuant to a directive issued by the SEC after a series of public hearings, adopted rules permitting the negotiation of commission rates on that portion of transactions in securities listed on the defendant exchanges in excess of Five Hundred Thousand Dollars ($500,000) and that in April, 1972 said rules were amended, pursuant to a request of the SEC, to permit negotiation of commission rates on that portion of transactions in listed securities in excess of Three Hundred Thousand Dollars ($300,000).

14. Denies each and every allegation contained in paragraph NINETEENTH.

15. Denies each and every allegation contained in paragraph NINETEENTH (a) except denies knowledge or information sufficient to form a belief as to the allegations respecting the membership of the Independent Investors Protective League or the authorization to

institute suit purportedly granted by the members of said organization contained in paragraph 19(a)(4) and declares that defendants need not plead in response to the allegations contained in paragraph 19(a)(9) through 19(a)(10).

16. Denies each and every allegation contained in paragraphs TWENTIETH and TWENTY-FIRST.

FIRST DEFENSE

17. The complaint fails to state a claim upon which relief can be granted and this Court lacks subject matter jurisdiction over the controversy alleged.

SECOND DEFENSE

18. Pursuant to its self-regulatory duties under the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.) the Exchange has adopted rules limiting membership and fixing minimum rates of commission and other charges, including the specific volume discount effective from December, 1968 to March, 1972, the interim service charge ("surcharge") effective from April, 1970 to March, 1972 and rules relating to negotiated commissions with respect to transactions in securities listed on the Exchange. All of the said rules are subject to review and revision by the SEC under Section 19(b) of the Exchange Act and such review jurisdiction is continuing to be exercised. By reason thereof neither the adoption of, nor the adherence to, said rules may be the subject of an antitrust claim because exclusive jurisdiction of the subject matter is vested in the SEC.

THIRD DEFENSE

19. The imposing of limitations on membership and the fixing of minimum rates of commission and charges, including the specific volume discount effective December, 1968 to March, 1972, and the surcharge effective from April, 1970 to March, 1972 and rules relating to negotiated commissions, by the Exchange are within the scope and carry out the purposes of the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.) and are therefore exempt from the operation of the antitrust laws.

FOURTH DEFENSE

20. The fixing of minimum rates of commission and charges, imposing limitations on membership and establishing the specific volume discount effective December, 1968 to March, 1972, and the rules relating to negotiated commissions by the Exchange were, and are, reasonable and justified and therefore not in contravention of the antitrust laws.

FIFTH DEFENSE

21. Since the Securities Exchange Act of 1934 (U.S.C. § 78 et seq.) provides for review and revision by the SEC of the Exchange's rules relating to membership, minimum rates of commission and other charges, primary jurisdiction of the subject matter of this action is vested in the SEC.

SIXTH DEFENSE

22. Plaintiff lacks standing to assert a claim under the antitrust laws either as President of the Independent Investors Protective League or on behalf of

its members or on behalf of an alleged class of small investors and further lacks standing to sue individually because he has not been directly injured in his business or property by reason of anything forbidden in the antitrust laws.

SEVENTH DEFENSE

23. Any claim for damages which accrued more than four years prior to the commencement of this action is barred by the applicable statute of limitations (15 U.S.C. §15b).

EIGHTH DEFENSE

24. By reason of the plaintiff's tardy assertion of the illegality of the Exchange rules and regulations with respect to the volume discount effective from December, 1968 to March, 1972 and the interim service charge instituted in April, 1970 and discontinued in March, 1972 and the payment to the defendant member organizations of commissions and other charges, including the surcharge in accordance with the schedules established by the Exchange and defendant's reliance upon the apparent acquiescence of the plaintiff and the purported class, plaintiff and the alleged class are guilty of laches and are estopped from asserting any claim against this defendant.

NINTH DEFENSE

25. All the rules challenged herein were promulgated and adopted by the Exchange and adhered to by the member organizations pursuant to an order, request

or the approval of the SEC and consequently the Exchange and the member organizations thereof should not be held liable for any violation of law occasioned therefor by reason of the good faith reliance by the defendants upon the authority and jurisdiction of the SEC.

WHEREFORE, defendant Merrill Lynch demands judgment dismissing the complaint with costs and disbursements.

Dated: New York, New York
September 28, 1972

BROWN, WOOD, FULLER, CALDWELL & IVEY

By Roger J. Hawke
(A Member of the Firm)
Attorneys for Defendant Merrill Lynch,
Pierce, Fenner & Smith Incorporated
One Liberty Plaza
New York, New York 10006
(212) 349-7500

ANSWER OF DEFENDANT AMERICAN STOCK EXCHANGE, INC. 10-2-72

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

RICHARD A. GORDON, et al.,	:	
Plaintiff,	:	71 Civ. 1496
-against-	:	
NEW YORK STOCK EXCHANGE, INC., et al.,	:	ANSWER
Defendants.	:	

- -x

Defendant American Stock Exchange, Inc. by its attorneys, Davis Polk & Wardwell, answering the complaint herein upon information and belief:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph FIRST.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph SECOND.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph THIRD.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph FOURTH.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph FIFTH, except admits that plaintiff purports to bring this action on behalf of those persons described in paragraph FIFTH, but denies that this action is

validly brought as a class action under Rule 23 of the Federal Rules of Civil Procedure and further denies that the persons so described constitute a class within the meaning of said Rule.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph SIXTH, except admits that the American Stock Exchange, Inc. is a corporation duly organized and existing under the laws of the State of New York, and has an office and place of business at 86 Trinity Place, City and State of New York and admits that the American Stock Exchange, Inc. is registered with the Securities and Exchange Commission as a national securities exchange pursuant to Section 6 of the Securities Exchange Act of 1934, as amended, 15 U.S.C. § 78f and that the American Stock Exchange, Inc. has filed with the Securities and Exchange Commission, in accordance with said Section 6, copies of its Constitution and rules and all amendments thereto.

7. Denies each and every allegation set forth in paragraph SEVENTH, except admits that the New York Stock Exchange, Inc. and the American Stock Exchange, Inc. maintain honest auction markets for the purchase and sale of securities at prices arrived at by fair bargaining between buyers and sellers of these securities.

8. Denies each and every allegation set forth in paragraph EIGHTH, except admits that the New York Stock Exchange, Inc. and the American Stock Exchange, Inc. maintain markets where securities listed on those exchanges can be purchased and sold by members of those exchanges

on behalf of themselves, their member organizations, and their customers, that the number of said members is limited by the number of available memberships and that membership is acquired by purchase in a competitive auction market.

9. Denies each and every allegation set forth in paragraph NINTH, except admits that the New York Stock Exchange, Inc. and the American Stock Exchange, Inc. are subject to regulation by the Securities and Exchange Commission.

10. Declares that it is not required to plead to the allegations of law pleaded in paragraph TENTH.

11. Denies each and every allegation set forth in paragraph ELEVENTH.

12. Denies each and every allegation set forth in paragraph TWELFTH, except admits that defendants Merrill Lynch, Pierce, Fenner and Smith, Inc. and Bache and Company, Inc. are member organizations of the New York Stock Exchange, Inc. and the American Stock Exchange, Inc. and are purportedly being sued individually and as representatives of an alleged class of "members" of the defendant exchanges.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph THIRTEENTH, except admits that in or about December, 1968 the defendant exchanges, with the approval of the Securities and Exchange Commission, adopted rules providing for a volume discount for transactions involving more than one thousand (1,000) shares and that in or about April, 1970, the defendant exchanges, again with the approval of the Securities and Exchange Commission,

adopted rules providing for an interim service charge to be imposed upon transactions of one thousand (1,000) shares of stock or less and that in or about March, 1972, a new commission rate schedule was adopted, and in or about April, 1972, the interim service charge was discontinued, with the approval of the Securities and Exchange Commission and the Price Commission, incorporating a value-related volume discount.

14. Denies each and every allegation set forth in paragraph FOURTEENTH.

15. Denies each and every allegation set forth in paragraph FIFTEENTH.

16. Denies each and every allegation set forth in paragraph SIXTEENTH.

17. Denies each and every allegation set forth in paragraph SEVENTEENTH, except admits that only members of the defendant exchanges may use the facilities of their respective exchanges, and refers to the published rules and regulations of the American Stock Exchange, Inc. for the terms thereof.

18. Denies each and every allegation set forth in paragraph EIGHTEENTH.

19. Denies each and every allegation set forth in paragraph NINETEENTH.

19(a). Denies each and every allegation set forth in paragraph NINETEENTH (a), except denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraph NINETEENTH (a)4 respecting the membership of the Independent Investors Protective League or the authorization to institute suit purportedly granted by the members of said organization, and declare that defendant the American Stock Exchange, Inc. need not plead

in response to the allegations set forth in paragraph NINETEENTH (a)9 (second of two such paragraphs) through NINETEENTH (a)10.

20. Denies each and every allegation set forth in paragraph TWENTIETH.

21. Denies each and every allegation set forth in paragraph TWENTY-FIRST.

AS AND FOR A FIRST
AFFIRMATIVE DEFENSE

22. The complaint fails to state facts sufficient to constitute a cause of action.

AS AND FOR A SECOND
AFFIRMATIVE DEFENSE

23. Jurisdiction over the subject matter of this complaint is vested solely and exclusively with the Securities and Exchange Commission.

AS AND FOR A THIRD
AFFIRMATIVE DEFENSE

24. By reasons of the provisions of the Securities and Exchange Act of 1934, as amended, 15 U.S.C. § 78a *et seq.*, and the actions of the Securities and Exchange Commission thereunder, the acts of the American Stock Exchange, Inc. alleged in the complaint are exempt and immune from the provisions of the Robinson-Patman Act and the Sherman Act upon which the complaint is predicated.

AS AND FOR A FOURTH
AFFIRMATIVE DEFENSE

25. The subject matter of the complaint is within the primary jurisdiction of the Securities and Exchange Commission.

AS AND FOR A FIFTH
AFFIRMATIVE DEFENSE

26. The fixing of minimum rates of commission and charges, imposing limitations on membership and establishing the specific volume discount effective December, 1968 to March, 1972, and the rules relating to negotiated commissions by the American Stock Exchange, Inc. were, and are, reasonable and justified and therefore not in contravention of the antitrust laws.

AS AND FOR A SIXTH
AFFIRMATIVE DEFENSE

27. Plaintiff lacks standing to assert a claim under the antitrust laws either as President of the Independent Investors Protective League or on behalf of its members or on behalf of an alleged class of small investors because he has not been directly injured in his business or property by reason of anything forbidden in the antitrust laws.

AS AND FOR A SEVENTH
AFFIRMATIVE DEFENSE

28. Plaintiff and the alleged class are guilty of laches and are estopped from asserting the claims they make in the complaint against the American Stock Exchange, Inc.

AS AND FOR AN EIGHTH
AFFIRMATIVE DEFENSE

29. All the rules challenged herein were promulgated and adopted by the American Stock Exchange, Inc. and adhered to by the member organizations pursuant to an order, request or the approval of the Securities and Exchange Commission and consequently the American Stock Exchange, Inc.

should not be held liable for any violation of law occasioned therefor by reason of the good faith reliance by the defendant upon the authority and jurisdiction of the Securities and Exchange Commission.

AS AND FOR A NINTH
AFFIRMATIVE DEFENSE

30. Any claim against the American Stock Exchange, Inc. based on acts occurring more than four years prior to the commencement of this action is barred by the provisions of Section 4B of the Clayton Act, 14 U.S.C. § 15b.

WHEREFORE, defendant American Stock Exchange, Inc. demands judgment dismissing the complaint together with the costs and disbursements of this action.

Dated: New York, New York
September 29, 1972

DAVIS POLK & WARDWELL

By ______________________
Attorneys for the Defendant
American Stock Exchange, Inc.
1 Chase Manhattan Plaza
New York, New York 10005
Tel.: 212 HA 2-3400

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----------------------------------x

RICHARD A. GORDON, etc.,	:	
Plaintiff,	:	71 Civ. 1496 (MEL)
-against-	:	
NEW YORK STOCK EXCHANGE, INC., et al.,	:	NOTICE OF MOTION
Defendants.	:	

-----------------------------------x

S I R :

PLEASE TAKE NOTICE that upon the pleadings herein, the affidavits of Robert M. Bishop, H. Vernon Lee, Jr., and John P. Foynes, and the annexed statement pursuant to Rule 9(g) of the General Rules of this Court, the undersigned will move this Court before the Hon. Morris E. Lasker at Room No. 2903, United States Court House, Foley Square, New York, N.Y., on December 29, 1972, at 10:00 a.m., or as soon thereafter as counsel can be heard, or at such other time and place as the Court shall direct, for an order pursuant to Rules 12(b) and 56 of the Federal Rules of Civil Procedure, dismissing the complaint and granting summary judgment in favor of defendants and against plaintiff, and for such other and further relief as is just and proper.

Dated: New York, N.Y.
December 4, 1972

Yours, etc.,

MILBANK, TWEED, HADLEY & McCLOY

By [signature]
(A Member of the Firm)
Attorneys for defendants
New York Stock Exchange, Inc.
and Bache & Co., Inc.
1 Chase Manhattan Plaza
New York, N.Y. 10005

LORD, DAY & LORD

By [signature]
(A Member of the Firm)
Attorneys for defendant
American Stock Exchange
25 Broadway
New York, N.Y. 10004

BROWN, WOOD, FULLER, CALDWELL & IVEY

By [signature]
(A Member of the Firm)
Attorneys for defendant
Merrill Lynch, Pierce, Fenner
& Smith, Inc.
1 Liberty Plaza
New York, N.Y. 10006

TO: BADER AND BADER
Attorneys for plaintiff
274 Madison Avenue
New York, N.Y. 10016

DEFENDANTS' RULE 9(g) STATEMENT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

--------------------------------X

RICHARD A. GORDON, etc., :

Plaintiff, : 71 Civ. 1496 (MEL)

-against- :

NEW YORK STOCK EXCHANGE, INC., et al. :

Defendant

STATEMENT PURSUANT TO RULE 9(g)

--------------------------------X

Defendants respectfully submit that the following material facts are not in dispute.

1. The New York Stock Exchange (the "NYSE") and the American Stock Exchange (the "Amex") are corporations organized under the laws of the State of New York for the purpose of providing for their members and the public two-way auction markets in exchange listed stocks, bonds and other securities.

2. The NYSE presently has 1,366 members, all of whom are individuals. The Amex presently has 650 regular members and 217 associate members, all of whom are individuals. The NYSE has 527 member organizations and the Amex has over 500 member organizations.

3. Since their founding, the NYSE and the Amex at all times have had rules limiting their membership and prescribing the minimum commissions to be charged by members and member organizations on transactions executed for the investing public in securities dealt in on the respective exchanges.

4. The NYSE and the Amex were registered by the Securities and Exchange Commission (the "SEC") as national securities exchanges in 1934 pursuant to the provisions of Section 6 of the Securities Exchange Act of 1934 (the "1934 Act"). At the time of said registration, the respective constitutions and rules of the NYSE and the Amex were submitted to and approved by the SEC pursuant to the requirements of the 1934 Act.

5. Since registering with the SEC in 1934, the NYSE and the Amex have changed their respective constitutional provisions and rules prescribing minimum commission rates a number of times. Copies of each such rule change or amendment were submitted by the exchanges to the SEC as required pursuant to Section 6(a)(4) of the 1934 Act and SEC Rule 17(a)-8.

6. The SEC, in carrying out its duty of supervision under Section 19(b) of the 1934 Act, studied and reviewed all the proposed changes. After such study and review the SEC in some instances permitted the proposed changes to become effective without modification; in other instances the SEC requested modifications in the proposed changes which were then adopted by the NYSE and the Amex.

7. In 1959, at the request of the SEC, the NYSE undertook a study which revealed that the inflexibility of the then prevailing commission rate structure had a potential for causing market dislocations because of the growth of institutional-size business. Beginning in 1965, the Amex undertook studies of its own intra-member and non-member commission rate structures, with particular emphasis on institutional-size transactions.

8. The period of study expended on the problem of a volume discount extended over a period of some six years -- from 1962 to 1968. Both the NYSE and the SEC developed proposals to deal with market problems created by the absence of a volume discount. These proposals were made public and comment invited on January 26, 1968 in the SEC's Exchange Act Release No. 8239. On May 28, 1968, the SEC wrote the NYSE and the Amex advising of the Commission's determination that "changes in the present commission rate structure are required to benefit the investing public," and directing that interim adjustments be made in the exchanges' commission rate structures pending a final revision at the conclusion of the SEC Rate Hearings. On December 5, 1968, the rules of the NYSE and the Amex were modified to provide for a volume discount on all public orders for securities listed on the respective exchanges involving more than 1000 shares of stock.

9. Studies prepared by the NYSE, the Amex, and the SEC indicated that the securities commission business was sorely pressed in late 1969 and early 1970 by reason of the peak volume demands, increasing costs (there had not been a commission increase in over a decade) and the diminution of revenues from institutional trades which were subject to a discount. In order to correct these difficulties and protect small investors -- whose trades many brokerages would no longer accept -- the NYSE and the Amex proposed to the SEC the imposition of an interim service charge on smaller orders. The SEC approved this proposal on the condition that the imposition of the service

charge be for a strictly limited time and that the exchanges ensure that small investors were not discriminated against and that member organizations took all steps to ameliorate their financial problems. This interim service charge became effective on both exchanges in April, 1970. It was due to expire 90 days later, but because of continuing financial difficulties, the NYSE and the Amex proposed its extension. The SEC, after public hearings in July, 1970 approved. The interim service charge remained in effect from April, 1970 until April, 1972, when the present rate structures were enacted by the exchanges.

10. As a result of the intensive investigation of the commission rate structure over nearly a decade, including two SEC reports (The Special Study of 1963 and the Institutional Investor Study of 1971) and two years of testimony and evidence in the Rate Hearings, the SEC determined, in late 1970, that fixed charges for portions of orders above a certain amount were neither necessary nor appropriate under the 1934 Act. The NYSE and the Amex each adopted the new rate proposal then urged by the SEC for the negotiation of commission rates on that portion of orders in excess of \$500,000 (i.e., \$500,000 was established as the "breakpoint" between fixed minimum and negotiated commission rates).

11. The \$500,000 breakpoint was considered experimental and both exchanges instituted a program of monitoring the impact of negotiated rates, again at SEC direction. On February 2, 1972, the Commission announced its determination that the breakpoint should be lowered to \$300,000.

Both the NYSE and the Amex acceded and adopted the necessary changes in their respective constitutions in April, 1972.

12. During the course of the regulatory activity relating to the volume discount, interim service charge and negotiated commission rates, the SEC's Rate Hearings, commencing on July 1, 1968, received evidence and testimony on every aspect of the exchanges' commission rate structure. After the Hearings terminated in 1971, the NYSE proposed, and the SEC approved, the present rate schedule which was adopted by both exchanges in April, 1972. The present commission rate structure repealed the previously adopted volume discount and interim service charge and replaced it with a schedule of commission rates incorporating a cost-related discount for volume transactions as well as negotiated rates of commission on that portion of orders in excess of $300,000.

Dated: New York, New York
December 4, 1972

Respectfully submitted,

MILBANK, TWEED, HADLEY & McCLOY
1 Chase Manhattan Plaza
New York, New York 10005
Attorneys for defendants New York Stock Exchange, Inc. and Bache & Co., Inc.

LORD, DAY & LORD
25 Broadway
New York, New York 10004
Attorneys for defendant American Stock Exchange, Inc.

BROWN, WOOD, FULLER, CALDWELL & IVEY
1 Liberty Plaza
New York, New York
Attorneys for defendant Merrill Lynch, Pierce, Fenner & Smith, Incorporated

OFFICE COPY

AFFIDAVIT OF H. VERNON LEE IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND EXHIBITS ANNEXED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------------------------------x

RICHARD A. GORDON, etc., Plaintiff,	71 Civ. 1496 (MEL)
-against-	AFFIDAVIT IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND FOR SUMMARY JUDGMENT
NEW YORK STOCK EXCHANGE, INC., et al., Defendants.	

----------------------------------x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

H. VERNON LEE, JR., being duly sworn, deposes and says:

1. I am Vice-President and Secretary of the American Stock Exchange (the "Amex"), a defendant herein, and I am familiar with this matter. I make this affidavit in support of the defendants' motion for an order dismissing the complaint filed in this action and granting summary judgment to the defendants.

2. The Amex is a New York corporation, incorporated under the New York Not-for-Profit Corporation Law, whose business and purpose is to provide a securities marketplace in New York City for its members who are brokers and dealers in securities. As a two-way auction market for securities listed on the Amex, activity in the

Amex is characterized by competition both between and among buyers and sellers. The Amex presently has 650 regular members, who have direct access to the trading floor, and 217 associate members, who may do business on the trading floor only through a regular member. In addition, there are over 500 regular and associate member organizations, partnerships and corporations in which the general partners or the directors and major stockholders are Amex members or are approved by the Amex's Board of Governors.

3. The Amex was first organized in 1908 as the New York Curb Agency, an outdoor marketplace for corporate securities. In 1921 the name was changed to the New York Curb Market and a constitution was adopted to coincide with the outdoor exchange's move indoors to its present location on Trinity Place. In 1953 the name was officially changed to the American Stock Exchange. Since its early days as an outdoor exchange, the Amex has maintained rules limiting access to its facilities and prescribing the minimum commission rates which could be charged to non-members on transactions in securities listed on the Amex. Members and member organizations who violate Amex rules with respect to the minimum commission rates chargeable to non-members are subject to disciplinary action.

4. Subsequent to the enactment of the Securities Exchange Act of 1934 (the "1934 Act"), the Amex submitted to the Securities and Exchange Commission (the "SEC") an application for registration as a national

securities exchange. The Amex also submitted for SEC approval copies of its Constitution and Rules, which contained provisions requiring members to charge specified minimum commissions to non-members. The Amex was registered with the SEC on September 23, 1934. At the time of its registration the Amex was required by § 6(a)(1) of the 1934 Act to agree "to comply, and to enforce ... compliance by its members, with the provisions of [the 1934 Act] ... and any rule or regulation ... thereunder." The registration was granted upon findings by the SEC, as required by §§ 6(d) and 6(b) of the 1934 Act, that the Amex was "so organized as to be able to comply with the provisions of [the 1934 Act] ... and the rules and regulations thereunder and the rules of the exchange are just and adequate to ensure fair dealing and to protect investors [,]" and further, that the rules of the Amex "include provision for the expulsion, suspension, or disciplining of a member for conduct or proceeding inconsistent with just and equitable principles of trade ...."

5. Since the SEC originally approved the Constitution and Rules of the Amex upon its registration on September 23, 1934, the constitutional provisions and rules prescribing minimum commission rates chargeable to non-members have been changed by the Amex a number of times. The Amex has submitted copies of each rule change or amendment to the SEC as required pursuant to § 6(a)(4) of the 1934 Act and SEC Rule 17(a) - 8.

The Amex's present constitutional provisions and rules relating to commission rates (annexed as Exhibits A and B) are the product of studies conducted by the Amex and the New York Stock Exchange (the "NYSE"), as well as hearings and studies conducted by the SEC [Report of the Special Study of Securities Markets, House Doc. No. 815, 88th Cong., 1st Sess. (1963) and The Institutional Investor Study, House Doc. No. 92-64, 92nd Cong., 1st Sess. (1970)].

6. In late 1962 the Costs and Revenues Committee of the NYSE, at the direction of the SEC, initiated a study of the need and feasability of implementing a volume discount for large transactions in securities. In a report transmitted by the NYSE to the SEC on November 29, 1965, the Cost and Revenue Committee recognized the need for volume discounts due to the growing number of institutional-sized transactions and the lack of any provision in the existing non-member commission rate structure for discounts on block trades. In a later report submitted by the NYSE to the SEC on January 2, 1968, the Committee made specific proposals to minimize and control customer-directed "give-ups", the reciprocal and rebative methods block traders utilized to avoid commission rates. On January 26, 1968, the SEC proposed for adoption by national securities exchange Rule 10b-10, a provision which would restrict give-ups.

7. In 1965 the Amex commissioned Haskins and Sells, a major accounting firm, to undertake a study of the exchange's intra-member commission structure and to evaluate its fairness and adequacy. In early 1968, Amex's Board of Governors appointed a Subcommittee on Commission Structure

[the "Subcommittee"], to review all aspects of the exchange's commission rates in light of changing market conditions, costs of doing business, and needs of the investing public. The Subcommittee submitted its first memorandum to Amex members and member organizations on April 19, 1968 (annexed as Exhibit C), in which it reported preliminary findings on the existing intra-member commission rates and solicited the opinions and suggestions of the Amex membership.

8. Amex President Ralph S. Saul transmitted the Subcommittee's April 19 memorandum to the SEC in a letter to Chairman Manuel F. Cohen on April 24, 1968. (Annexed as Exhibit D). In that letter, Mr. Saul informed Chairman Cohen that the Subcommittee was presently studying the commission rates charged to non-members of the Amex. Mr. Saul also expressed the Amex's opposition to the SEC's proposed Rule 10b-10 as not in the public interest, and advised that the Subcommittee would consider possible alternative methods for dealing with the problem of customer-directed give-ups.

9. On May 28, 1968, Chairman Cohen transmitted to the Amex a letter of the same date written to President Robert W. Haack of the NYSE advising that, as a result of its extensive and continuing study of the commission rate structure of national securities exchanges, the SEC believed "changes in the present commission rate structure are required to benefit the investing public." (The letter of transmittal to the Amex and the Haack letter are both annexed as Exhibit E). The letter contained a request by the SEC, pursuant to its authority under §19 (b) of the 1934 Act to fix reasonable rates of commission, that the NYSE, on or before September 15, 1968, make changes in its commission

rates which would either (a) conform to an SEC proposed commission schedule (attached to the Haack letter) or (b) eliminate minimum commission rates on all orders in excess of $50,000. This request was said to be made "in the context of the Commission's responsibilities to consider the national policies embodied both in the securities laws and in the antitrust laws." In his letter of transmittal to the Amex, Commissioner Cohen stated that "the Commission has not directed a similar letter to your Exchange because of possible differences in the situation prevailing" but "requests that you give immediate attention to appropriate modifications of your commission rate structure, including any necessary interim steps." The letter to President Haack also announced that the SEC, pursuant to its authority under §21(a) of the 1934 Act, would hold public hearings on the commission rate structure issue commencing July 1, 1968 (the "Rate Structure Hearings").

10. In a letter to the SEC on June 26, 1968, President Saul advised that after careful consideration of the Commission's proposed Rule 10b-10 and recent studies by the Amex staff, the Amex Board of Governors "has agreed in principle to eliminate...customer-directed give-ups...." (Annexed as Exhibit F). The letter also advised that the Board of Governors "has also agreed that a modification of the present minimum commission rate structure to provide volume discounts is also appropriate...." Finally, the letter stated that the Amex's staff had been directed by the Board of Governors "to work with the Commission to achieve

meaningful and prompt implementation of the Board of Governors' position with respect to discounts and give-ups."

11. On September 20, 1968 the Subcommittee on Commission Structure transmitted to Amex members and member organizations a memorandum recommending adoption of a volume discount on transactions in securities involving more than 1,000 shares and an amendment to the Amex's Constitution which would prohibit customer-directed give-ups. (Annexed as Exhibit G)

12. Pursuant to a vote of its membership, on December 5, 1968 the Amex effectuated amendments to its Constitution which provided for volume discounts on transactions in securities involving more than 1,000 shares, and prohibited customer-directed give-ups.

13. Between 1968 and 1970, because of a tremendous rise in the volume of public transactions on the national securities exchanges, the facilities and resources of Amex members became increasingly overburdened. The expense of expansion needed to meet the increased demand,as well as rising costs during a decade in which there had been no increase in commission rates, contributed to a drastic decline in the profits of the securities industry. The hardest hit were member organizations which primarily handled small orders for individual customers. The volume discount, which became effective on December 5, 1968, threatened only to exacerbate the situation because of the liklihood that it would reduce commission revenues.

14. On February 13, 1970 and March 16, 1970, the NYSE presented to the SEC statistical evidence demonstrating the financial distress of the securities industry and the need for interim relief in the form of an increase in commission

rates. On March 19, 1970, the NYSE submitted to the SEC a proposed rule which would impose an interim service charge, in addition to the existing minimum commission rate, on all public transactions in listed securities involving 1,000 shares of stock or less.

15. In a letter to the SEC on March 26, 1970, the Amex expressed its support of the NYSE's proposed interim service charge and set forth the results of a survey conducted among Amex member organizations which indicated the need for temporary relief of that nature. (Annexed as Exhibit H).

16. In a letter to the NYSE on April 2, 1972, the SEC expressed its non-objection to the proposed interim service charge on transactions involving 1,000 shares or less. (Annexed as Exhibit I). The SEC stated that its own data had confirmed the loss experience of the industry and that "past losses and the prospect of continued financial drain have influenced many member firms to impose limitations on their services to small investors." The SEC conditioned its non-objection to the interim service charge upon its limitation to a 90 day period and the requirement that steps be taken to ensure the restoration of full brokerage services for small investors.

17. On April 2, 1972, the Amex transmitted to the SEC copies of its new Rule 396, which provided for an interim service charge essentially the same as that proposed by the NYSE. In its letter of transmittal, the Amex agreed to adhere to the conditions stated by the SEC in its letter of April 2 to the NYSE. (A copy of Rule 396 and the Amex's letter of transmittal to the SEC are annexed as Exhibit J). The interim service charge went into effect on April 6, 1970 and was to expire on July 6, 1970.

18. On April 10, 1970 the SEC responded to the Amex's April 2 submission with a letter expressing its non-objection to Rule 396 imposing an interim service charge. (Annexed as Exhibit K).

19. Prior to the expiration date of the interim service charge, studies conducted by the NYSE revealed that the financial condition of the securities industry had not improved. These findings were relayed to the SEC on June 18, 1970 by President Haack of the NYSE. In a letter on June 29, 1970, the Amex advised the SEC that economic conditions among its member organizations had steadily deteriorated since the interim service charge was initially requested and that the continued application of the surcharge was urgently needed. (Annexed as Exhibit L).

20. On July 2, 1970 the SEC announced that the Rate Structure Hearings, originally convened on July 1, 1968, would be reconvened on July 13, 1970 to receive evidence on the need to extend the interim service charge. In its announcement, the SEC stated that it would not act to terminate the service charge pending the outcome of the hearings on its extension.

21. On July 16, 1970, the Amex transmitted to the SEC the results of a new survey of member organizations supplementing the results of the survey conveyed in its March 26 letter which first demonstrated the need for an interim service charge. (Annexed as Exhibit M). The results of the new survey revealed that the overwhelming majority of member organizations surveyed had continued to suffer substantial losses even with the additional income provided by the service charge.

22. The SEC continued its supervision of the financial state of the securities industry and did not revoke its approval of the interim service charge. The interim service charge was repealed in April, 1972, when Amex Rule 396 was changed to prohibit the imposition of any charge in excess of the prescribed commission rates presently in effect.

23. On June 30, 1970, as a result of its own studies on the commission rate structure, the NYSE submitted to the SEC a proposed permanent schedule or "rate package" to replace the interim commission rates then in effect. On July 2, 1970 the SEC announced that its Rate Structure Hearings would reconvene on July 20, 1970 to receive testimony and other relevant data concerning the NYSE's proposed new rate package. (Exchange Act Release No. 8924, dated July 2, 1972, Annexed as Exhibit N).

24. On July 16, 1970, the Amex submitted to the SEC its views "as to the importance of the commission rate-making process, and the relationship of that process to the functioning of the exchange markets and the regulation of securities markets." (Annexed as Exhibit O). In its submissions the Amex expressed its support of the procedures followed by the NYSE in developing its June 30 commission rate schedule proposal.

25. On March 17, 1971, the SEC transmitted to the Amex copies of correspondence which had passed between the Commission and the NYSE relating to the NYSE's June 30 commission rate proposal. (Annexed as Exhibit P.) On October 22, 1970 the SEC had advised the NYSE that "fixed charges for portions of orders in excess of $100,000 are neither necessary nor appropriate."

On February 10, 1971 the SEC directed the NYSE to take action to implement, by April 1, 1971, negotiated commission rates on institutional-sized orders, but agreed to accept $500,000 as the breakpoint for the negotiated rates. On March 9, 1971, the NYSE responded that the April 1 deadline did not offer sufficient time to review the SEC's proposal and implement a constitutional amendment. The SEC on March 10, 1971 reiterated its April 1 deadline, and warned the NYSE that the maintenance of minimum commission rates on portions of orders above the $500,000 breakpoint after the deadline "would be unreasonable and could be contrary to the Exchange Act."

26. In a letter to the SEC on March 26, 1971, President Saul of the Amex stated that "in view of the Commission's position, the Exchange is obliged to recommend appropriate revisions to its Constitution and Rules to eliminate fixed minimum commissions on that portion of an order in excess of $500,000." (Annexed as Exhibit Q)

27. Pursuant to a vote of the membership, the amendments to the Amex's Constitution providing for negotiated commission rates on that portion of orders in excess of $500,000 became effective on May 3, 1971.

28. The SEC consistently maintained that the $500,000 breakpoint for negotiated commission rates did not represent a final determination as to commission rate structures, and that the Commission would review the impact

of the changes. Accordingly, to allow the SEC and the exchange to observe the workings of competitive rates, on May 3, 1971 the Amex effectuated Rule 398, which required members to report executions of orders exceeding $500,000. (A copy of Amex letter to SEC, dated April 28, 1971, transmitting proposed Rule 398 is annexed as Exhibit R).

29. On February 2, 1972, the SEC advised in its "Statement on the Future Structure of the Securities Markets" that the breakpoint for portions of orders subject to negotiated commission rates should be lowered from $500,000 to $300,000. The Commission directed the NYSE to take the required action implementing such a change within 90 days. In a letter on March 19, 1972 the SEC advised the Amex that it should begin to draft rule changes providing for a lowering of the breakpoint for negotiated commission rates to $300,000. (Annexed as Exhibit S). The Amex replied by letter on March 28, 1972, submitting to the SEC, pursuant to SEC Rule 17(a)-8, copies of proposed rule changes providing for a lowering of the breakpoint to $300,000. (Annexed as Exhibit T).

30. On April 24, 1972, pursuant to a vote of its membership, the Amex amended its Constitution to adopt a commission rate schedule providing for cost-related discounts for volume transactions and negotiated commission rates on that portion of orders in excess of $300,000. Concurrently, provisions for the earlier volume discount and the interim service charge were repealed.

31. The existing commission rate structure of the Amex is the subject of continuous study by the exchange and

the SEC. The SEC has not determined that the Amex's present commission rates represent a final resolution of the commission rate structure. Of particular interest to the SEC and the Amex in their continuing observation of the impact of existing commission rates, is the advisability of lowering the breakpoint between minimum and negotiated commission rates below its present $300,000 level.

32. The plaintiff in this action, Richard A. Gordon, has never applied for, or been denied application for, membership in the Amex during the past six years. This information is based on an examination of Amex records. It was not necessary to examine the records to ascertain whether the Independent Investors Protective League has ever applied for membership in the Amex, since only individuals are eligible for Amex membership.

H. Vernon Lee, Jr.

H. Vernon Lee, Jr.

Sworn to before me this
4th day of December, 1972.

Robert C. Burns

ROBERT C. BURNS
NOTARY PUBLIC, State of New York
No. 31-0509550
Qualified in New York County
Commission Expires March 30, 1973

EXHIBIT A

American Stock Exchange
Constitution
Article VI, Revised to August 1, 1972

ARTICLE VI

Commissions and Charges

General Rule

SEC. 1. **** Commissions shall be charged and collected upon the execution of all orders for the purchase or sale, for account of others, of securities, including securities "when, as and if issued", listed or admitted to unlisted trading upon the Exchange, and these commissions shall be at rates not less than the rates in this Article prescribed, and shall be net and free from any rebate, return, discount or allowance made in any shape or manner, or by any method or arrangement direct or indirect. No bonus or percentage or portion of a commission, whether or not such commission be at or above the rates herein established, or any portion of a profit except as may be specifically permitted by the Constitution or by a rule adopted by the Board of Governors, shall be given, paid or allowed directly or indirectly, or as a salary or portion of a salary, to a clerk or person for business sought or procured for any member of the Exchange or member firm or member corporation. No member, member firm or member corporation shall make a proposition for the transaction of business at less than the minimum rates of commission prescribed in this Article. No member, member firm or member corporation shall, in consideration of the receipt of business in securities dealt in on the Exchange and at the direct or indirect request of a non-member or by direct or indirect arrangement with a non-member, make any payment or give up any work or give up all or any part of any commission or other property to which such member, member firm or member corporation is or will be entitled.****

Transactions on another exchange

Notwithstanding the provisions of this Article, any member of the Exchange or member firm or member corporation which is a member or registered firm or corporation of another exchange located in the United States or Canada, or registered with a Canadian exchange as being entitled to a return of commission from members of such exchange, may in respect of transactions made on such other exchange charge the rates of commission prescribed by such other exchange.

Amendment.
****November 1, 1968, effective December 5, 1968.

Schedule of Stock Commissions

SEC. 2. Commissions shall be as follows:

Non-Member rates

(a) The minimum commission rates to non-members on stocks, rights and warrants (hereinafter referred to as stocks), shall be as follows:

On 100 share orders

(1) On each order for 100 shares, on stocks selling at $1.00 per share and above, commissions shall be based upon the amount involved in the order and, subject to the provisions of subsections (f), (h) and (l) of this Section 2, shall be not less than the rates hereinafter specified:

Amount Involved in the Order	Minimum Commission
$100—but under $800	2.0% of money involved + $ 6.40
$800—but under $2,500	1.3% of money involved + $12.00
$2,500—and above	0.9% of money involved + $22.00

Notwithstanding the foregoing:

(i) When the amount involved in an order is less than $100, the minimum commission shall be as mutually agreed.

(ii) The minimum commission on an order for 100 shares shall not exceed $65.00.

Multiple round lot orders

(2) On each multiple round lot order for 200 shares or more, on stocks selling at $1.00 per share and above, commissions shall be based upon the amount involved in the order and, subject to the provisions of subsections (f), (h) and (l) of this Section 2, shall be not less than the rates hereinafter specified:

Amount Involved in the Order	Minimum Commission
$100—but under $2,500	1.3% of money involved + $12.00
$2,500—but under $20,000	0.9% of money involved + $22.00
$20,000—but under $30,000	0.6% of money involved + $82.00
$30,000—to and including $300,000	0.4% of money involved + $142.00

Plus a charge for each round lot of 100 shares within the order as follows:

First to tenth round lot	$6.00 per round lot
Eleventh round lot and above	$4.00 per round lot

Notwithstanding the foregoing:

(i) When the amount involved in an order is less than $100, the minimum commission shall be as mutually agreed.

(ii) The minimum commission per round lot shall not exceed the single round lot commission computed in accordance with the provisions of paragraph (1) of subsection (a) of this Section 2.

Odd Lot Orders

(3) On any odd lot order, commissions shall be based upon the amount involved in the order and shall be not less than the rates specified in paragraph (1) of subsection (a) of this Section 2, less $2.00, subject to the provisions of subsections (f), (h) and (l) of this Section 2.

Notwithstanding the foregoing:

(i) When the amount involved in an odd lot order is less than $100, the minimum commission shall be as mutually agreed.

(ii) The minimum commission on an odd lot order shall not exceed $65.00.

(iii) When one or more odd lot orders plus one or more round lot orders are executed in the same security, on the same day, for the same account, on the same side of the market, the commission(s) on such odd lot order(s) shall not exceed the commission which would be chargeable with respect to the nearest round lot in excess of such odd lot order(s).

(4) On that portion of an order involving an amount of $500,000 or less, on stocks selling below $1 per share, commissions shall be based upon the amount involved in the order and shall be not less than the rates hereinafter specified:

Amount Involved in the Order	Minimum Commission
$0—but under $1,000	8.4% of money involved
$1,000—but under $10,000	5.0% of money involved + $34.00
$10,000—and above	4.0% of money involved + $134.00

Notwithstanding the foregoing, when the amount involved in an order is less than $100, the commission shall b as mutually agreed.

Floor brokerage and clearance rates

(b) The minimum commission rates to regular and associate members on stocks, rights and warrants (hereinafter referred to as stocks) shall be based on the number of round lots and the price of the shares involved in each round lot order as follows:

(1) Regular member floor brokerage and clearance rates—

Price Per Share	First and Second Round Lot: Floor Brokerage Only Rate	First and Second Round Lot: Combined Floor Brokerage and Clearance Rate	Third Through Tenth Round Lot: Floor Brokerage Only Rate	Third Through Tenth Round Lot: Combined Floor Brokerage and Clearance Rate	Eleventh Round Lot and Over: Floor Brokerage Only Rate	Eleventh Round Lot and Over: Combined Floor Brokerage and Clearance Rate
1/256 of $1 and above, but under 3/256 of $1	$0.05	$0.08	$0.04	$0.07	$0.03	$0.05
3/256 of $1 and above, but under 1/4 of $1	0.30	0.50	0.25	0.41	0.20	0.32
1/4 of $1 and above, but under 1/2 of $1	0.65	1.05	0.55	0.90	0.45	0.75
1/2 of $1 and above, but under $1	1.10	1.80	1.00	1.60	0.90	1.45
$1 and above, but under $4	1.50	2.45	1.20	1.95	1.10	1.80
$4 and above, but under $8	2.60	4.20	2.10	3.40	1.90	3.10
$8 and above, but under $12	3.15	5.10	2.50	4.05	2.05	3.30
$12 and above, but under $16	3.40	5.50	2.80	4.55	2.50	4.05
$16 and above, but under $20	3.85	6.25	3.05	4.95	2.70	4.35
$20 and above, but under $30	4.10	6.65	3.30	5.35	2.95	4.80
$30 and above, but under $40	4.35	7.05	3.50	5.65	3.15	5.10
$40 and above, but under $50	4.65	7.55	3.75	6.10	3.35	5.45
$50 and above	4.95	8.00	3.95	6.40	3.55	5.75

(2) Associate member floor brokerage and clearance rates—

Price Per Share	First and Second Round Lot: Floor Brokerage Only Rate	First and Second Round Lot: Combined Floor Brokerage and Clearance Rate	Third Through Tenth Round Lot: Floor Brokerage Only Rate	Third Through Tenth Round Lot: Combined Floor Brokerage and Clearance Rate	Eleventh Round Lot and Over: Floor Brokerage Only Rate	Eleventh Round Lot and Over: Combined Floor Brokerage and Clearance Rate
1/256 of $1 and above, but under 3/256 of $1	$0.06	$0.09	$0.06	$0.09	$0.04	$0.06
3/256 of $1 and above, but under 1/4 of $1	0.40	0.60	0.30	0.45	0.20	0.30
1/4 of $1 and above, but under 1/2 of $1	0.80	1.20	0.70	1.05	0.60	0.90
1/2 of $1 and above, but under $1	1.40	2.10	1.20	1.80	1.10	1.65
$1 and above, but under $4	3.25	4.20	2.60	3.35	2.40	3.10
$4 and above, but under $8	5.65	7.25	4.60	5.90	4.15	5.35
$8 and above, but under $12	6.85	8.80	5.45	7.00	4.45	5.70
$12 and above, but under $16	7.40	9.50	6.10	7.85	5.45	7.00
$16 and above, but under $20	8.40	10.80	6.65	8.55	5.90	7.55
$20 and above, but under $30	8.95	11.50	7.20	9.25	6.45	8.30
$30 and above, but under $40	9.50	12.20	7.65	9.80	6.85	8.80
$40 and above, but under $50	10.15	13.05	8.20	10.55	7.30	9.40
$50 and above	10.80	13.85	8.60	11.05	7.75	9.95

Notwithstanding the foregoing rates specified in this subsection (b), when the amount involved in an order is less than $100, the commission shall be as mutually agreed.

When the amount involved in an order exceeds $300,000, the minimum commission to be charged pursuant to this subsection (b) shall apply only to the maximum number of round lot transactions involving an aggregate amount not in excess of $300,000.

Registered specialists' floor rates

(c) A registered specialist shall charge, as Floor rates for the execution of members' orders in stocks, rights and warrants (hereinafter referred to as stocks) given him on the Floor of the Exchange personally by a regular member, by a member representative, or by an employee of the Exchange, in writing and signed, the following commission based on the number of round lots and the price of the shares involved in each round lot order. These commissions shall apply only to transactions when the principal's name is given up at the time of such transactions.

Price Per Share	Rate per round lot — First and Second Round Lot	Third Through Tenth Round Lot	Eleventh Round Lot and Over
1/256 of $1 and above, but under 3/256 of $1	$0.04	$0.03	$0.02
3/256 of $1 and above, but under 1/4 of $1	0.25	0.20	0.15
1/4 of $1 and above, but under 1/2 of $1	0.50	0.40	0.35
1/2 of $1 and above, but under $1	$0.80	$0.75	$0.65
$1 and above, but under $4	1.10	0.90	0.80
$4 and above, but under $8	1.95	1.55	1.40
$8 and above, but under $12	2.35	1.90	1.55
$12 and above, but under $16	2.55	2.10	1.90
$16 and above, but under $20	2.90	2.30	2.05
$20 and above, but under $30	3.05	2.50	2.20
$30 and above, but under $40	3.25	2.65	2.35
$40 and above, but under $50	3.50	2.80	2.50
$50 and above	3.70	2.95	2.65

Notwithstanding the above rates, when the amount involved in an order is less than $100, the commission shall be as mutually agreed.

When the amount involved in an order exceeds $300,000, the prescribed commission to be charged pursuant to this subsection (c) shall apply to the maximum number of round lot transactions involving an aggregate amount not in excess of $300,000.

Schedule of Bond Commissions

(d) The Minimum Commission Rates on Bonds and Notes shall be as follows:

To Regular Members, to Associate Members and to Non-Members

	Give-up	Clearance	Non-Members
All Bonds or Notes selling at less than 1, per $1,000 par value	$.25	$ .50	$ .75
All Bonds or Notes selling at 1 and under 10, per $1,000 par value	.37½	.62½	1.25
All Bonds or Notes having 6 months to and including 5 years to run, selling between 96 and 110, inclusive, per $1,000 par value	.50	.80	1.25
Less than six months to run	Mutual Agreement	Mutual Agreement	Mutual Agreement
All Bonds or Notes having 5 years or less to run selling at 10 and under 96 and over 110, per $1,000 par value	.75	1.25	2.50
All Bonds or Notes having more than 5 years to run selling at 10 or over, per $1,000 par value	.75	1.25	2.50
Bonds called for redemption having 6 months to and including 12 months to run and having a current market price of not less than 96% or more than 110% of their redemption price per $1,000 par value	.50	.80	1.25
Less than 6 months to run	Mutual Agreement	Mutual Agreement	Mutual Agreement
Bonds called for redemption having 6 months to and including 12 months to run and having a current market price of less than 96% or more than 110% of their redemption price per $1,000 par value	.75	1.25	2.50

Specialists

(e) The Specialists Floor Rates on Bonds and Notes shall be as follows:

All Bonds or Notes selling at less than 1	$.10 per $1,000 par value
All Bonds or Notes selling at 1 and under 10	$.15 per $1,000 par value
All Bonds or Notes having 6 months to and including 5 years to run, selling between 96 and 110, inclusive	$.20 per $1,000 par value
Less than 6 months to run	$.10 per $1,000 par value
All Bonds or Notes having 5 years or less to run selling at 10 and under 96 and over 110	$.30 per $1,000 par value
All Bonds or Notes having more than 5 years to run selling at 10 or over	$.30 per $1,000 par value
Bonds called for redemption having 6 months to and including 12 months to run and having a current market price of not less than 96% or more than 110% of their redemption price	$.20 per $1,000 par value
Less than 6 months to run	$.10 per $1,000 par value
Bonds called for redemption having 6 months to and including 12 months to run and having a current market price of less than 96% or more than 110% of their redemption price	$.30 per $1,000 par value

Definition of an order

(f) For the purpose of this Section 2

(1) A round lot order shall be deemed to include either all purchases or all sales for one account, of a single security, on the same day, amounting to 100 shares or any multiple thereof, irrespective of the unit of trading in the stock. This definition applies whether the order is received from a non-member, allied member, member, member firm or member corporation.

(2) An odd lot order shall be deemed to include either all purchases or all sales of one account, of a single security, on the same day, pursuant to a single order amounting to less than 100 shares, irrespective of the unit of trading in the stock. Any odd lot order shall be deemed to be a separate order whether combined with a round lot order or standing alone. This definition applies whether the order is received from a non-member, allied member, member, member firm or member corporation.

(3) With respect to stocks in which the unit of trading is less than 100 shares, the minimum commission rates to be charged to regular and associate members for Floor brokerage and clearance pursuant to subsection (b) of this Section 2 and the prescribed commission to be charged by registered specialists as Floor rates pursuant to subsection (c) of this Section 2 shall be determined as follows:

(i) All purchases or all sales for one account, of a single security, on the same day, amounting to 100 shares or any multiple thereof, shall be treated as a round lot order as defined in paragraph (1) of this subsection (f) and the applicable round lot commission rate shall be charged.

(ii) The commission to be charged on that portion of an order which involves a number of shares equal to the unit of trading or any multiple thereof but less than 100 shares, shall be an amount equal to that proportion of the next round lot rate, after first applying subparagraph (i) of this paragraph (3), which such number of shares bears to 100.

Determining amount involved in an order

(g) In determining the amount involved in an order, commissions and taxes shall be disregarded.

Limitation on minimum commissions

(h) Notwithstanding the rates prescribed in paragraphs (1) and (2) of subsection (a) of this Section 2, when the amount involved in a single order exceeds $300,000, the minimum commission to be charged pursuant to those paragraphs shall apply only to the maximum number of round lot transactions involving an aggregate amount not in excess of $300,000. The Exchange shall from time to time prescribe the procedures to be followed in computing commissions pursuant to this Article.

Special rates

(i) Notwithstanding the other provisions of this Article, when Rights or Warrants are admitted to dealings upon the Exchange whether on an issued or when issued basis, and when other securities are admitted to such dealings on a when issued basis the Board of Governors may determine special minimum rates of commission on any and all transactions in such rights, warrants or other securities. Such special rates so prescribed or provided by the Board of Governors shall be deemed to be the rates prescribed in this Article. Unless special rates have been so determined the minimum rates of commission prescribed in this Article shall apply.

(j) The minimum clearing charges to members, member firms and member corporations applicable to stock, warrant and right transactions effected by them for their own account shall be as follows:

Round lots:	$1.00 a share and over—$3.00 for combined receipt and delivery
	Under $1.00 a share—as mutually agreed
Odd lots:	Ten shares and over—$1.00 on each side
	Under ten shares—as mutually agreed

Warrants: Same as stocks

Rights: As mutually agreed.

Where any such transaction involves a purchase or sale made at one time from a single seller or buyer and involves an amount in excess of $300,000, the minimum rates specified above shall apply only with respect to that portion of such purchase or sale not in excess of $300,000.

Supervised order

(k) When an order is supervised by a regular member, not a partner in or a holder of voting stock in the particular member firm or member corporation whose business he is supervising, the specialist to whom the order is given, either by the member supervising such order or by the telephone clerk of the specific firm or corporation whose name is on the order, shall bill such member supervising the order the specialists' Floor rate and such member shall, in turn bill the firm or corporation whose name is on the order slip the regular member give-up rate.

Public obligations and called securities

(l) Commission rates to members or non-members may be charged, as mutually agreed, on obligations of the United States, Puerto Rico, Philippine Islands and States, Territories and Municipalities therein, and on securities which, pursuant to call, are to be redeemed within twelve months, unless commission rates on any or all such securities are prescribed in this Section or by the Board of Governors.

Commissions on small orders

(m) Except as otherwise provided by Rule adopted by the Board of Governors, commissions shall be charged and collected at the rates prescribed in this Section 2 on the execution of any small orders or for small accounts.

Broker-Dealer Discount

(n) A member, member firm or member corporation may, on orders which he or it receives from a non-member broker-dealer whose principal place of business is in one of the United States, the District of Columbia or the Commonwealth of Puerto Rico, and which is a member of the National Association of Securities Dealers, Inc. or is subject to Sec. 15(b)(8) of the Securities Exchange Act of 1934 for the account of any customer whose account is carried by such broker-dealer, or is introduced by such broker-dealer to such member, member firm or member corporation, allow not in excess of a 40% discount from the commission computed, in accordance with the provisions of subsection (a) of this Section 2, provided that the primary purpose of such non-member broker-dealer and of any parent of such non-member broker-dealer is the transaction of business as a broker or dealer in securities in one of the United States, the District of Columbia or the Commonwealth of Puerto Rico within the meaning of Section 2(d) of Article IV, and the rules thereunder and, provided, further, that such non-member broker-dealer is subject to an agreement in writing as provided by rule adopted by the Board of Governors, which agreement has not been terminated, containing such provisions as may be required from time to time by rule adopted by the Board of Governors and providing that any such discount so allowed shall be retained by such non-member broker-dealer free from any rebate, return, discount or allowance made in any shape or manner, or by any method or arrangement, direct or indirect, to or for the benefit of any customer of such non-member broker-dealer except that with respect to any order for the account of a customer whose account is introduced to such non-member broker-dealer by a second non-member broker-dealer, the non-member broker-dealer may allow all or any portion of such discount to such second non-member broker-dealer provided that the second non-member broker-dealer would qualify for a discount under the provisions hereof had it introduced its customer's account directly to the member, member firm or member corporation and is itself subject to a similar agreement.

The provisions of this subsection (n) shall expire one year after the effective date hereof, unless extended for such period of time, or from time to time, as shall be determined by the Board of Governors.

Amended effective August 26, 1958, March 30, 1959, October 19, 1959, January 22, 1960, September 4, 1962, July 26, 1963, December 5, 1968, February 2, 1971, May 3, 1971, April 3, 1972 and April 24, 1972.

Commissions to Firms and Corporations

SEC. 3. †*A member firm having as a general partner a regular or associate member of the Exchange, and a member corporation having either a regular member who is a holder of voting stock therein and is actively engaged in its business and devotes the major portion of his time thereto or an associate member who is a director or executive officer thereof, shall be entitled to have its business transacted at the rates of commission prescribed for such member.* †

Branch offices

The privilege provided for in this Section shall extend to a branch house or branch office only when conducted under the same name as the parent firm and only when the partners and their respective interests therein are identical with the partners and their respective interests in the parent firm, or when conducted as part of the business of the member corporation.

Members who are special partners or are not directors or executive officers

†A member who is a special partner in a firm does not thereby confer any of the privileges of the Exchange on such firm, and a member who is not a holder of voting stock of a regular member corporation actively engaged in its business and devoting the major portion of his time thereto or who is not a director or executive officer of an associate member corporation does not confer any of the privileges of the Exchange on such corporation, and on all business done by him for such firm or corporation, commissions must be charged and collected at rates not less than the rates prescribed in this Article.†

Commissions, at the rates prescribed in this Article for non-members, shall be charged and collected on business done for the account of allied member and non-member partners of member firms, allied member and non-member stockholders, directors or officers of member corporations and joint-accounts to which an allied member or non-member is a party.

Amendments.
* Amended January 16, 1958, effective May 1, 1958.
† Amended effective February 2, 1971.

Commissions to Suspended Member

SEC. 4. *†**(a) A regular or associate member suspended under the provisions of Section 3 of Article V, who has not been declared ineligible for reinstatement and who has not also been suspended under the provisions of Section 4 or Section 5 of Article V, may in the discretion of the Board of Governors have his business transacted at member's rates.

††**(b) On the application of a member organization which has been suspended under the provisions of Section 3 of Article V, but has not been declared ineligible for reinstatement and has not been suspended under the provisions of Section 4 or Section 5 of Article V, or on the application of a member organization whose only general partner who was a regular or associate member of the Exchange, or whose only voting stockholder actively engaged in its business and devoting the major portion of his time thereto who was a regular member of the Exchange, or whose only director or executive officer who was an associate member of the Exchange, has been suspended under the provisions of Section 3 of Article V, but has not been declared ineligible for reinstatement and has not been suspended under the provisions of Section 4 or Section 5 of Article V, the Board of Governors in its discretion may in either such case permit such member organization to have its business transacted at member's rates during all or such portion of such suspension as the Board may determine and under such conditions as the Board may fix. The Board may in its discretion and during such period of time and under such terms and conditions as it may determine permit a former member organization suspended under the provisions of Section 3 of Article V to continue to have its business transacted at member's rates, notwithstanding the fact that the sole regular member of such member organization has disposed of his regular membership or the sole associate member of such member organization has ceased to be an associate member, provided that the transactions with respect to which such member's rates are charged are liquidating transactions or are reasonably necessary to permit such firm or corporation to wind up its business or to transfer the account of a customer.††

††**(c) On the application of a member organization which has not itself been suspended under the provisions of Section 4 or Section 5 of Article V but whose only general partner who was a regular or associate member of the Exchange, or whose only voting stockholder actively engaged in its business and devoting the major portion of his time thereto who was

a regular member of the Exchange, or whose only director or executive officer who was an associate member of the Exchange, has been suspended under the provisions of Section 4 or Section 5 of Article V, the Board of Governors in its discretion may permit such member organization to have its business transacted at member's rates during all or such portion of the suspension of such regular or associate member as the Board may determine and under such conditions as the Board may fix, and so long as such suspended regular or associate member remains a general partner, voting stockholder, director or executive officer of such member organization.** † * ††

Amendments.

* Amended January 16, 1958, effective May 1, 1958.
† Amended effective September 4, 1962.
** Amended effective November 19, 1969.
†† Amended effective February 2, 1971.

Board May Prescribe Service Charges

SEC. 5. Members of the Exchange, member firms and member corporations shall make and collect, in addition to minimum prescribed commissions, such other minimum charges with respect to accounts and services as the Board of Governors may from time to time prescribe. Except as may be specifically permitted by a rule adopted by the Board of Governors, such charges shall be net and free from any rebate, return, discount or allowance made in any shape or manner, or by any method or arrangement, direct or indirect, and no bonus or percentage of such charges, whether such charges be minimum charges prescribed by the Board or greater charges, shall be given, paid, or allowed, directly or indirectly, or as a salary or portion of a salary to a clerk or to any member of the Exchange, member firm or member corporation, or to any other person, firm or corporation for business sought or procured for any member of the Exchange, a member firm or a member corporation.

Commission—Individual Regular Member in War Service

SEC. 6. * Notwithstanding any other provision of this Article, the Board of Governors may permit a member, member firm or member corporation to pay to any regular member, who is actively engaged in any military, naval or other public service incident to the defense of the United States or of any nation which is then allied or associated with the United States, amounts not exceeding 50% of the minimum commissions received from time to time by such member, member firm or member corporation for the execution of orders, for the purchase or sale of securities, which would otherwise have been executed by such absent member in the usual course of his business. In the exercise of the discretion herein granted, the Board of Governors may condition or restrict or may withdraw or deny any such permission.*

Amendments.

* Amended effective September 4, 1962.

Commission—Member Firm with Sole Regular Member General Partner, or Member Corporation with Sole Regular Member Director, in War Service

SEC. 7. †* Notwithstanding any other provisions of this Article, when a regular member of the Exchange who is the sole regular member general partner in a member firm or the sole regular member voting stockholder of a member corporation, is actively engaged in any military, naval or other public service incident to the defense of the United States or of any nation which is then allied or associated with the United States, the Board of Governors may permit an agreement between such member firm or member corporation and another regular member or regular member firm or regular member corporation, providing in substance that, on transactions executed on the Floor of the Exchange by such other regular member or regular member firm or regular member corporation for such firm or corporation, the commissions chargeable by the executing member or member firm or member corporation shall be less than the minimum commissions otherwise prescribed as applicable to transactions effected on the Floor of the Exchange for other members where a principal is given up, provided that (1) such commissions so chargeable shall not be less than 50% of the minimum commissions so prescribed, (2) the transactions with respect to which such reduced commissions are charged were executed at a time when the regular member in such service was absent from the Floor solely by reason of such service, (3) that such transactions would otherwise in general have been effected by such absent member as a part of his usual business, and (4) that any such agreement has been submitted to and approved by the Exchange.* †

Amendments.

* Amended effective September 4, 1962.
† Amended effective February 2, 1971.

American Stock Exchange
Office Rules
Section 6, Revised to August 1, 1972

Section 6. Collection of Commissions and Fees

Non-Member Order Executed and Given Up

Rule 380. In transactions where orders are received from a non-member, and the member, member firm or member corporation executing the order is directed to give up another member, member firm or member corporation the responsibility for collecting the full commission shall rest with the member, member firm or member corporation settling the transaction.

Member Order Executed and Given Up

Rule 381. In transactions where orders are received from a member, member firm or member corporation and a clearing firm or corporation is given up, the responsibility for collecting the full commission shall rest with the clearing firm or corporation and it shall be the duty of the member, member firm or member corporation executing such orders to report the transactions to the clearing firm or corporation and to render his bill therefor at the rates specified. A member, member firm or member corporation who executes an order for a member, member firm or member corporation and clears the security himself must charge the rates specified.

Execution of Domestic Customer's Orders in Foreign Market

Rule 382. When a member, member firm or member corporation accepts an order, from a customer within the continental United States or Canada, for the purchase or sale of a security admitted to dealings on the Exchange and causes the same to be executed in a market outside the continental United States or Canada, during the time the Exchange is open for the transaction of business, such member, member firm or member corporation shall charge and collect, in addition to any commission payable to the party or parties executing such order in said market, a sum not less than the prescribed minimum member or non-member commission rate, as the case may be.

Clearance of Domestic Customer's Transaction in Foreign Market

Rule 383. When a member, member firm or member corporation accepts and clears, for a customer within the continental United States or Canada, a transaction arising from a purchase or sale of a security admitted to dealings on the Exchange effected by said customer in a market outside the continental United States or Canada, during the time the Exchange is open for the transaction of business, such member, member firm or member corporation shall charge and collect, in addition to any commission payable to the party or parties executing such transaction, a sum not less than the specified minimum member or non-member commission rate, as the case may be.

Securities Received or Delivered on Privilege

Rule 384. When securities are received or delivered for a non-member or an allied member on a privilege, the specified commission must be charged.

Amendments.
April 3, 1958, effective May 1, 1958.

Mutual Agreement Clearing Charge on Service to Regular Member

Rule 385. When a member, member firm or member corporation receives and delivers bonds for a regular member, the clearing charge for said service may be a matter of mutual agreement based upon a fixed rate for each one thousand dollars of bonds; the payment of a certain sum of money for said service for any period of time is forbidden.

Amendments.
October 1, 1959, effective October 19, 1959.

Commissions on Commodity Business

Rule 386. No member, member firm or member corporation shall, without charging the customary commission, transact or offer to transact for any customer who is dealing in securities dealt in on the Exchange, any business in commodities.

Bunched Orders

Rule 387. The execution of "bunched" orders, without charging the required commission, is forbidden.

Reverse Transactions

Rule 388. No member, member firm or member corporation shall make any transaction "over the counter" in securities dealt in on the Exchange for his own account or for the account of his member firm or a partner thereof or for his regular member corporation or a stockholder therein or for his associate member corporation or for any account in which either he or they have a direct or indirect interest, and a reverse operation upon the Exchange at or about the same time, wherein the difference between the purchase and sale prices is less than the recognized commission on such a purchase or sale.

Clearance of Commissions

Rule 389. Unless otherwise agreed by the parties concerned, all payments between members of the Exchange on account of commissions on business when a principal is given up shall be made through the American Stock Exchange Clearing Corporation as provided by its By-Laws and Rules.

Assumption of Loss Prohibited

Rule 390. No member shall assume for his own account or for the account of his member firm or member corporation, a contract made for a customer, if a loss to the customer has been established or ascertained, unless the contract was made by mistake or unless the consent of the Exchange has first been obtained.

Amendments.

September 6, 1962.

Granting of Special Advantages to Customer Prohibited

Rule 391. Any agreement or arrangement between a member, member firm or member corporation and a customer, whereby special and unusual rates of interest are given or money advanced upon unusual terms, with intent to give special or unusual advantage to such customer, for the purpose of securing his business, is forbidden.

Interest on Short Sales

Rule 392. An allowance for interest on short sales of stock shall not be more than the loan market rates for the stocks borrowed or used for such short sales.

Securities and Exchange Commission Registration Fee

Rule 393. There shall be paid to the Exchange by each member, member firm or member corporation in such manner and at such time as the Treasurer of the Exchange shall direct, the sum of one cent for each $500 or fraction thereof of the dollar volume of the sales upon the Exchange of securities (whether or not cleared by the American Stock Exchange Clearing Corporation) cleared by such member, member firm or member corporation, and any such member, member firm or member corporation required by this rule to pay any sum to the Exchange in respect to any sale upon the Exchange, shall charge and collect from the person for whom he was acting in making such transaction the sum of one cent for each $500 or fraction thereof of the dollar amount involved in such transaction. The monies so paid to the Exchange shall be paid to the Securities and Exchange Commission as the registration fee imposed upon the Exchange by the provisions of the Securities Exchange Act of 1934.

Receipt or Delivery of Non-Member Securities Against Payment

Rule 394. When a member or member organization, in connection with a transaction made by a non-member or allied member off the Exchange, receives into or delivers out of the account of the non-member or allied member against payment securities dealt in on the Exchange, the prescribed non-member commission shall be charged.

Amendments.
April 3, 1958, effective May 1, 1958.
July 22, 1965.

Commissions on Rights and Warrants

Rule 395. Pursuant to Section 2, Paragraph (i), of Article VI of the Constitution, unless otherwise determined by the Board of Governors, on rights and warrants which are admitted to dealings upon the Exchange, whether on an issued or unissued basis, and which are selling below 50¢ per right or warrant, the following special rates of commission shall apply:

(1) On business for non-members or allied members, including joint account transactions in which any such person is interested, the commission may be as mutually agreed.

(2) On business for regular and associate members:

Price per share	Rate per 100 Shares		
	Specialist	Give-up	Clearance
1/256 of $1	$.01	$.05	$.05
1/128 of $1	.02	.10	.10
1/64 of $1 but under 2/32 of $1	.05	.10	.20
2/32 of $1	.05	.10	.20
over 2/32 of $1 but under 4/32 of $1	.05	.10	.20
4/32 of $1 but under 8/32 of $1	.13	.25	.50
8/32 of $1 but under 1/2 of $1	.13	.25	.50

Notwithstanding the foregoing, when the amount involved in a transaction is less than $100, the commission may be as mutually agreed.

Amendments.
Adopted effective December 7, 1961.
September 6, 1962.

Small Accounts

Rule 396. No member organization which introduces or carries the accounts of customers who purchase or sell small amounts of stock shall impose any limitation of any kind on the size or frequency of customer orders in such accounts or the size of such accounts, unless such limitation was generally imposed prior to April 1, 1969. With respect to the execution of any small order for the purchase or sale of any security admitted to dealings on the Exchange, no member organization shall impose any fee, commission or other charge on any customer in excess of the commission prescribed in Article VI, Section 2(a) of the Constitution.

Amendments.
April 3, 1972.

Computation of Comimssion on Stocks

Rule 397. The minimum commission required to be charged under Section 2 of Article VI shall be computed on the basis of the lowest priced executions first.

Adopted.
May 3, 1971.

Reports of Executions of Orders Exceeding $500,000

Rule 398. Promptly following the 10th day of each calendar month each member or member organization shall report the following information to the Exchange with respect to each order executed, either as principal or agent, during the preceeding calendar month for the purchase or sale of any stock admitted to dealings upon the Exchange, where the amount involved in such order exceeds $500,000:

(1) the name of the stock;

(2) whether the customer of the member or member organization purchased or sold the stock. Where the member or member organization had all or a portion of both sides of the transaction this should be indicated and the amount on each side should also be indicated;

(3) whether the member or member organization acted as agent or principal, or both, and the number of shares on each side of the transaction with respect to which the member or member organization so acted;

(4) the date of execution;

(5) the market or markets where executed;

(6) the number of shares in the order and the number of shares in each execution included within the order;

(7) the commission or commissions charged on each portion of the order; and,

(8) such other information as the Exchange may from time to time require.

For the purposes of this rule, an order shall be as defined in Article VI, Section 2(i)(2) of the Constitution.

Adopted.
May 3, 1971.

Qualifying for Discount

Rule 399. (a) No discount shall be allowed by any member or member organization to any non-member broker-dealer as permitted by Article VI, Section 2, paragraph (n) of the Constitution, unless at the time the non-member broker-dealer is subject to an agreement in writing with the Exchange providing:

(1) Any discount allowed to such non-member broker-dealer as permitted by the said paragraph (n) shall be retained by such non-member broker-dealer free from any rebate, return, discount or allowance made in any shape or manner, or by any method or arrangement, direct or indirect, to or for the benefit of any customer of such non-member broker-dealer, except that with respect to any order for the account of a customer whose account is introduced to such non-member broker-dealer by a second non-member broker-dealer (hereinafter called "introducing non-member"), the non-member broker-dealer may allow all or any portion of such discount to the introducing non-member provided that the introducing non-member would qualify for a discount under the provisions of said paragraph (n) had it introduced its customer's account directly to a member or member organization of the Exchange, and provided further that the introducing non-member broker-dealer is itself subject to an agreement in writing with the Exchange as provided under Section (b) of this Rule. For the purpose of this Rule, the term "customer" shall be defined as that term is defined in Section 6(c)(2)(A)(ii) of the Securities Investors Protection Act of 1970;

(2) Such non-member broker-dealer shall not receive any such discount except with respect to orders executed for the accounts of bona fide customers of such non-member, whose accounts are carried by such non-member broker-dealer or are introduced by such non-member broker-dealer to the member or member organization which carries the account;

(3) Such non-member broker-dealer shall cease to be qualified to receive any such discount whenever such non-member breaches any provision of its agreement with the Exchange or whenever such non-member ceases to maintain its principal place of business in one of the United States, the District of Columbia or the Commonwealth of Puerto Rico, or ceases to be a member of the National Association of Securities Dealers, Inc. or to be subject to Section 15(b)(8) of the Securities Exchange Act of 1934 or whenever the primary purpose of such non-member and of any parent of such non-member (as defined in Rule 314) ceases to be the transaction of business as a broker or dealer in securities within the meaning of such rule. Whenever such non-member ceases to be qualified to receive any such discount such non-member shall be required to give the Exchange prompt written notice thereof;

(4) At any time and from time to time during normal business hours the Exchange shall have access to the books and records of such non-member broker-dealer at its principal place of business in order to determine compliance by such non-member with its agreement with the Exchange. Whenever any such examination by the Exchange fails to establish to the satisfaction of the Exchange compliance by such non-member with the provisions of its agreement with the Exchange, or whenever such non-member ceases to qualify for the discount provided by Article VI, Section 2, paragraph (n) of the Constitution, the Exchange may send written notice to such non-member terminating such agreement and shall thereupon notify members and member organizations of such termination;

(5) Unless sooner terminated by such non-member or the Exchange, such agreement shall terminate whenever the provisions of Article VI, Section 2, paragraph (n) of the Constitution shall expire.

(b) No introducing non-member may receive all or any portion of any discount permitted by Article VI, Section 2, paragraph (n) of the Constitution, unless, at the time such discount is received, the introducing non-member is subject to an agreement in writing with the Exchange providing:

(1) Any such discount so received shall be retained by the introducing non-member free from any rebate, return, discount or allowance made in any shape or manner, or by any method or arrangement, direct or indirect, to or for the benefit of any customer of the introducing non-member;

(2) The introducing non-member shall not receive any such discount except with respect to orders executed for the accounts of bona fide customers of the introducing non-member which accounts are carried by a non-member broker-dealer subject to an agreement with the Exchange as provided under Section (a) of the rule;

(3) The introducing non-member shall cease to be qualified to receive any such discount whenever such non-member breaches any provision of its agreement with the Exchange or whenever such non-member cases to maintain its principal place of business in one of the United States, the District of Columbia or the Commonwealth of Puerto Rico, or ceases to be a member of the National Association of Securities Dealers, Inc. or to be subject to Section 15(b)(8) of the Securities Exchange Act of 1934 or whenever the primary purpose of such non-member and of any parent of such non-member (as defined in Rule 314) ceases to be the transaction of business as a broker or dealer in securities within the meaning of such rule. Whenever such non-member ceases to be qualified to receive any such discount such non-member shall be required to give the Exchange prompt written notice thereof;

(4) At any time and from time to time during normal business hours the Exchange shall have access to the books and records of such introducing non-member at its principal place of business in order to determine compliance by such introducing non-member with its agreement with the Exchange. Whenever any such examination by the Exchange fails to establish to the satisfaction of the Exchange compliance by such introducing non-member with the provisions of its agreement with the Exchange, or whenever such introducing non-member ceases to qualify for the discount provided by Article VI, Section 2, paragraph (n) of the Constitution, the Exchange may send written notice to such introducing non-member terminating such agreement and shall thereupon notify members and member organizations and non-member broker-dealers subject to agreements under Section (a) of this Rule of such termination;

(5) Unless sooner terminated by the introducing non-member or the Exchange, such agreement shall terminate whenever the provisions of Article VI, Section 2, paragraph (n) of the Constitution shall expire.

Amendments.
Adopted effective April 3, 1972.

AMERICAN STOCK EXCHANGE

SUBCOMMITTEE ON COMMISSION STRUCTURE

Memorandum

April 19, 1968

To: Members and Member Organizations
FROM: Subcommittee on Commission Structure
SUBJECT: Intra-Member Commission Rates

The Subcommittee on Commission Structure has been appointed by the Board of Governors to review all aspects of the Exchange's commission rates in light of changing market conditions, costs of doing business, and needs of the investing public. As a first step in such a review, the Subcommittee on Commission Structure has examined the intra-member commission rate structure of the Exchange. The Subcommittee has been aided in its examination by a report of Haskins & Sells, a major accounting firm, engaged by the Exchange in 1965 to make a study of the intra-member commission structure and to evaluate its fairness and adequacy to each segment of the membership.

It should be emphasized that this memorandum does not cover commission rates charged to public customers.

The purpose of this memorandum is to obtain your reaction to the Subcommittee's review of the intra-member commission rate schedules and to have the benefit of your suggestions and ideas. No final decisions have been reached and suggestions will be welcomed. The purpose of this review is to strengthen the Exchange as a public marketplace and to insure an equitable division of commissions among members.

The Subcommittee feels these matters merit the most searching consideration. A suggested procedure for expressing your views in writing or in person is outlined at the end of this memorandum.

Present Intra-Member Commission Rate Schedules

The intra-member commission schedules of the Exchange cover charges by members to other members for execution on the floor and clearing of transactions. There are three intra-member rates: the first covering the execution of a transaction (the "floor brokerage" or floor "give-up" rate), the second covering both the execution and clearing of a transaction (the "clearance" rate), and the third covering the execution of orders entrusted by members to the specialist for execution (the "specialist's commission"). These rates are prescribed by the Exchange Constitution on a per round-lot basis based on share price.

American Stock Exchange clearance and floor brokerage rates have traditionally been higher than corresponding New York Stock Exchange rates. American and New York Stock Exchange floor brokerage and clearance rates for regular members are set forth in Attachment A. These differences apparently stemmed from differences in average share prices on the two exchanges when the original schedules were adopted many years ago.

There is one other significant difference between the intra-member rates of the two exchanges. On this Exchange the specialist earns a commission substantially less than the floor brokerage rate on orders entrusted to him for execution though the specialist performs the same service and assumes the same risks as the floor broker. On the New York Stock Exchange, as well as most other exchanges, the specialist receives full floor brokerage on orders left with him for execution. (See Attachment B).

The lower specialist's commission on this Exchange was apparently established for two reasons. First, the specialist on this Exchange also acts as odd-lot dealer and the revenue from this source was supposed to offset the lower specialist's commission. Second, the lower rate was intended to encourage a flow of limit orders to the book, thereby making it easier for the specialist to provide orderly markets.

The Haskins & Sells report examined specialist income. It was their finding that specialist income from odd-lots plus income earned from the present specialist floor brokerage rate was less than the income a specialist would earn if he received the entire floor brokerage as on the New York Stock Exchange.

It should also be pointed out that there are differences in risks when comparing odd-lot dealer activities on this Exchange with those on the New York Stock Exchange. On that exchange, associate brokers of the odd-lot firms can immediately offset positions in the round-lot market. A specialist on the American Stock Exchange cannot offset positions in the round-lot market unless such trading meets the same performance standards now applied to his round-lot trading.

Changes in the Exchange Marketplace

In recent years, there have been several important changes in the Exchange marketplace affecting the intra-member commission rate schedules:

1. The average price of shares traded on the Exchange has risen from $7 in 1962 to approximately $24 at the present time, an increase of over 200%. Nearly 87% of Exchange share volume is now concentrated in stocks selling over $5 per share and 40% of such volume is in stocks selling over $20 per share. Comparable percentages five years ago were 60% and 12%. With the change in the average price of shares traded on the Exchange, income from floor brokerage business has increased substantially. The strengthening of the Exchange's listing and delisting requirements should serve to maintain average share prices at higher levels than in the past and continue the trend away from volume in lower price brackets.

2. Volume on the Exchange has continued to expand, rising from a daily average volume of 1,234,640 shares in 1962 to 4,562,112 shares in 1967.* In the first quarter of 1968 daily average volume rose to over 5 million shares.

3. The steady growth in volume has prompted many commission firms to purchase additional seats on the Exchange or activate seats held by office partners in order to execute transactions through their own floor members.

4. Increased business generated by the successful completion of the new seat plan, in which 151 associate member firms acquired regular memberships, has strengthened the economic position of floor brokers executing business for other members. Despite the presence on the floor of more floor partners representing their own firms, expanding volume has required increasing use of independent brokers to handle overflow floor business.

5. Through intensive efforts over the past several years, the Exchange's specialist system has been substantially strengthened. Specialist units have buttressed their capital and manpower, training programs have helped insure that new specialists are qualified, and specialists have steadily raised their level of performance. As a result of increased demands by the Exchange, specialists have increased their participation, or principal trading, in the market from 10.3% in 1962, when volume averaged 1.2 million shares a day, to 15.5% in 1967, when volume averaged over 4.5 million shares. At the same time, specialist stabilization has risen from 74.6% in 1962 to 95.6% today. Improvement in specialist performance has substantially improved the quality of the market provided by the Exchange.

6. Changes in Exchange volume, price levels and regulatory standards have imposed greater market-making demands upon Exchange specialists. With greater public interest in our market, the Exchange specialist must meet sudden surges in selling pressure or buying power usually concentrated on one side of the

market. To fulfill his function of providing a fair and orderly market, the specialist must risk substantially more capital to take or supply stock in these situations.

Specialists' Commissions

Against this background, the Board of Governors of the Exchange has approved in principle an increase in specialists' commissions.

These considerations were persuasive in adopting that position:

- To attract capital and manpower to specializing there must be a reliable source of income to buffer the risks of dealer activity. Specialists' commission income serves this purpose by providing a continuous source of capital and incentive in the performance of market-making activities during good markets and bad.
- The specialist performs the basic brokerage function with respect to orders left with him for execution. In addition to the actual execution, the specialist has the various tasks and liabilities associated with handling the order and reporting its execution. On most other exchanges the specialist receives the full floor brokerage for performing this service.
- A specialist's ability to make trading profits is restricted by standards of performance imposed by the Exchange upon his market-making activities. These standards have tended to make brokerage commissions an increasingly important source of capital and incentive in the performance of market-making activities.
- Haskins & Sells found that specialist income from odd-lots plus income from specialist commissions is not equivalent to the income a specialist would earn if he received the entire floor brokerage rate as on most other major exchanges.
- Coupled with increased regulatory requirements, the increases in Exchange volume and price levels described above have imposed greater market-making demands upon specialists and obligated specialists to risk substantially more capital.

Finally, the Haskins & Sells report recommended that in view of increased demands made upon the specialist's dealer function, specialist commission income be increased approximately 50%.

Floor Brokerage

After a preliminary review of the intra-member floor rates the Subcommittee has not yet reached any definitive conclusions with respect to floor brokerage rates. However, it is helpful to list some of the reasons it has considered for and against a downward revision in the floor brokerage rate.

Reasons for a downward revision in the floor brokerage rate include the following:

- The rate would be more in line with floor brokerage on other exchanges.
- Such a step would benefit members who are directly responsible for bringing business to the Exchange and who have been faced with steadily increasing costs of doing business.
- A downward revision might encourage firms doing a public commission business to bring more business to the Exchange and make increasing use of independent floor brokers.

Some of the reasons for maintaining the present rate may be summarized as follows:

- The impact of a change on one segment of the membership might be unduly severe.
- If floor brokerage rates are lowered, this would mean that the Exchange, with its direct mail clearance, could compete unfairly with clearing members having correspondent relationships with out-of-town firms.
- A downward revision in the rates might have a impact on seat values.

Weighing these pros and cons, the Subcommittee is inclined to believe that some lowering of the floor brokerage rate may be necessary and desirable in the best interest of the Exchange and the membership as a whole.

In line with these views and the Board's approval in principle of an increase in specialists' commissions, a test schedule has been prepared which couples an increase in the specialist rate with a downward revision in the floor brokerage rates. This test schedule is set forth in Attachment C for membership consideration.

Future Programs

The Exchange is now planning or implementing several programs which may affect intra-member rates.

In February, the Board of Governors authorized the Exchange administration to develop a plan for the automated execution of odd-lots on the Exchange. The Exchange has a responsibility to insure that it provides efficient service to the membership in the servicing of odd-lot orders. New procedures must be devised to increase efficiency and productivity in the execution of odd-lots and automating odd-lot executions will be a major step in that direction.

The Exchange's automation objectives on the floor are to increase productivity by automating activities which support the auction market, thus permitting greater volume to be handled without proportionate increases in personnel and trading facilities and freeing members from non-productive clerical tasks.

The Exchange has instituted a direct mail clearing service which is now in operation with three firms on line and a considerable number to be added this year. Over 50 firms have indicated their interest in this service. Its purpose is to reduce the cost of doing business on the Exchange for firms which do not have clearing facilities in New York.

The Subcommittee intends to continue its inquiry into all phases of the commission schedule. At this point, however, the comments of regular members, allied members and associate members on the above matters and any alternative approaches will be most welcome. The Subcommittee would appreciate any written comments before May 15, 1968. These should be addressed to Mr. H. Vernon Lee, Jr., Vice President, Membership Services Division. Arrangements can also be made with Mr. Lee's office for a personal appearance before members of the Subcommittee. The Subcommittee and the Exchange administration stand ready to answer any questions you may have.

Sincerely yours,

JOHN H. SCHWIEGER, Chairman
GORDON H. HENSLEY
JAMES J. LEE
HAROLD J. MINTZ
JOHN WASSERMAN

MACRAE SYKES
FRANK C. GRAHAM, JR.
RALPH S. SAUL
Ex-Officio

ATTACHMENT A

Present Regular Member Schedule

(Rate Per 100 Shares)

Price Range	Floor Brokerage ASE (NYSE)	Clearance ASE (NYSE)
1/256 of $1	.03 (.05)	.05 (.05)
1/128 of $1	.05 (.10)	.08 (.10)
1/64 of $1 under 2/32 of $1	.17 (.10)	.25 (.20)
2/32 of $1	.17 (.25)	.25 (.375)
over 2/32 of $1 under 8/32 of $1	.33 (.25)	.50 (.50)
8/32 of $1 under 1/2 of $1	.55 (.50)	.85 (.75)
1/2 of $1 under $1	1.00 (.50)	1.50 (.80)
$1 under $2	1.75 (1.25)	2.75 (2.00)
$2 under $5	2.05 (1.40)	3.20 (2.25)
$5 under $10	3.30 (2.10)	4.90 (3.50)
$10 under $20	4.00 (3.10)	6.05 (6.20)
$20 under $40	5.10 (3.65)	7.75 (7.30)
$40 under $100	5.65 (3.85)	8.60 (7.70)
$100 under $150	6.50 (4.35)	9.75 (8.70)
$150 under $200	6.50 (4.50)	9.75 (9.00)
$200 and above	6.50 (5.00)	9.75 (10.00)

ATTACHMENT B

Present Regular Member Specialist Floor Brokerage Schedule

(Rate Per 100 Shares)

Price Range	ASE Specialist Flr. Brokerage	NYSE Specialist Flr. Brokerage
1/256 of $1	.01	.05
1/128 of $1	.02	.10
1/64 of $1 under 2/32 of $1	.07	.10
2/32 of $1	.07	.25
over 2/32 of $1 under 8/32 of $1	.13	.25
8/32 of $1 under 1/2 of $1	.22	.50
1/2 of $1 under $1	.35	.50
$1 under $2	.70	1.25
$2 under $5	.80	1.40
$5 under $10	1.35	2.10
$10 under $20	1.70	3.10
$20 under $40	2.00	3.65
$40 under $100	2.20	3.85
$100 under $150	2.60	4.35
$150 under $200	2.60	4.50
$200 and above	2.60	5.00

ATTACHMENT C

Regular Member Test Schedule

(Rate Per 100 Shares)

Price Range	Present Flr. Brokerage ASE (NYSE)	Test Flr. Brokerage ASE	Present Specialist Flr. Brokerage ASE (NYSE)	Test Specialist Flr. Brokerage ASE
1/256 of $1	.03 (.05)	.05	.01 (.05)	.03
1/128 of $1	.05 (.10)	.10	.02 (.10)	.05
1/64 of $1 under 2/32 of $1	.17 (.10)	.15	.07 (.10)	.10
2/32 of $1	.17 (.25)	.25	.07 (.25)	.15
over 2/32 of $1 under 8/32 of $1	.33 (.25)	.35	.13 (.25)	.20
8/32 of $1 under 1/2 of $1	.55 (.50)	.50	.22 (.50)	.35
1/2 of $1 under $1	1.00 (.50)	1.00	.35 (.50)	.50
$1 under $2	1.75 (1.25)	1.50	.70 (1.25)	1.00
$2 under $5	2.05 (1.40)	1.75	.80 (1.40)	1.10
$5 under $10	3.30 (2.10)	2.50	1.35 (2.10)	1.70
$10 under $20	4.00 (3.10)	3.50	1.70 (3.10)	2.35
$20 under $40	5.10 (3.65)	4.25	2.00 (3.65)	2.80
$40 under $100	5.65 (3.85)	4.60	2.20 (3.85)	3.00
$100 under $150	6.50 (4.35)	5.20	2.60 (4.35)	3.30
$150 under $200	6.50 (4.50)	5.50	2.60 (4.50)	3.50
$200 and above	6.50 (5.00)	6.00	2.60 (5.00)	3.95

Ex. [illegible]

C
O
P
Y

April 24, 1968

The Honorable Manuel F. Cohen
Chairman
Securities and Exchange Commission
500 North Capitol Street, N.W.
Washington, D.C. 20549

Dear Chairman Cohen:

We are writing to inform you of steps the Exchange has been taking concerning its commission rate structure. As we mentioned in our letter of August 17, 1967, this matter involves nearly every important aspect of the exchange market and therefore decisions should be made upon the basis of careful study and analysis. We have taken a number of steps in that direction.

Since our letter of August 17, 1967, the Board of Governors of the Exchange has appointed a Subcommittee on Commission Structure to study all aspects of the Exchange's commission rates. As a first step in its study of the entire commission rate schedule, the Subcommittee reviewed the intra-member commission rates of the Exchange. The attached memorandum, which is being circulated to the membership, summarizes the Subcommittee's preliminary views regarding the intra-member commission rate structure and solicits comments and suggestions.

It should be noted that the memorandum does not cover commission rates charged to public customers. This aspect of the commission rate structure is now under study by the Subcommittee.

The Honorable Manuel F. Cohen April 24, 1968

The Exchange has reviewed Exchange Act Release No. 8239 concerning proposed Rule 10b-10. We feel strongly that adoption of proposed Rule 10b-10 would not be in the public interest. It would undermine the commission rate structure of the Exchange -- a structure which involves the efficiency of our central auction market and the ability of the Exchange to exercise its regulatory responsibilities. In view of these overriding considerations, and others presented in the many comments on the proposal, we urge the Commission to abandon a proposal which could irreparably damage the securities markets of this country.

The Subcommittee on Commission Structure, as part of its review of public commission rates, will consider possible alternative methods for dealing with the problems described in the Commission's Release.

We would like to reiterate our willingness to cooperate with the Commission and other self-regulatory organizations in the resolution of the difficult and complex questions involved in the commission rate area.

Sincerely,

Enclosure

s/Ralph S. Saul

COPY COPY

SECURITIES AND EXCHANGE COMMISSION

Washington, D. C. 20549

Office of
the Chairman

May 28, 1968

Mr. Ralph S. Saul, President
American Stock Exchange
86 Trinity Place
New York, New York 10006

Dear Mr. Saul:

Enclosed is a copy of a letter sent today to Mr. Robert W. Haack, President of the New York Stock Exchange.

The Commission has not directed a similar letter to your Exchange because of possible differences in the situation prevailing. However, the Commission requests that you give immediate attention to appropriate modifications of your commission rate structure, including any necessary interim steps.

Sincerely,

/s/ Manuel F. Cohen
Chairman

Enclosure

COPY COPY

SECURITIES AND EXCHANGE COMMISSION

Washington, D. C. 20549

Office of
the Chairman

Mr. Robert W. Haack
President
New York Stock Exchange
Eleven Wall Street
New York, New York 10005

Dear Mr. Haack:

As you are aware, the commission rate structure of national securities exchanges has been the subject of extensive and continuing study by the Commission. It has become apparent in the course of that study that the present minimum rate structure has led to the development of practices designed to avoid the purported restrictions agains the negotiation and the reduction of commission rates. We believe it is now generally recognized that changes in the present commission rate structure are required to benefit the investing public.

The Commission will hold public hearings under Section 21(a) of the Securities Exchange Act of 1934 commencing July 1, 1968, on the question of the commission rate structure of national securities exchanges. A copy of the order for public hearings is enclosed. One subject of those hearings will be whether, in view of present practices, a minimum exchange commission rate structure is necessary, and if so to what extent, in order to achieve the objectives of the Securities Exchange Act of 1934.

The Commission hereby makes written request pursuant to Section 19(b) of the Securities Exchange Act that your Exchange effect on its own behalf changes, to become effective on or before September 15, 1968, in its rules, policies and practices in respect of its commission rate by modifying Article XV, Section 2(a)(1) and appropriate other sections of the exchange constitution and rules either (a) in accordance with the revised minimum commission rates as set forth in Attachment A, or alternatively, (b) by eliminating, with respect to orders in excess of $50,000, requirements for minimum rates of commission. You should also implement appropriate reductions in the current intra-member rate for non-executing firms or eliminate requirements for minimum intra-member charges to such non-executing firms.

We wish to emphasize that this request is intended as an interim step and that the Commission has reached no definitive conclusion on whether the particular rates described in Exhibit A would reflect the optimum form of rate structure for your exchange or that any schedule of specified rates would provide a complete answer to the problems raised in Release No. 8239 and the comments thereon. Additional measures with respect to other matters, including give-ups are under continuing consideration and will be examined in the course of the hearing commencing July 1, 1968.

The request that your exchange take the foregoing steps is made in the context of the Commission's responsibilities to consider the national policies embodied both in the securities laws and in the antitrust laws.

It is based upon the deficiencies in the present exchange rate structure which fails to provide appropriate discounts but permits give-ups direct by institutional managers, with consequent departures from the purporte minimum rate structure on an arbitrary and discriminatory basis.

Sincerely,

/s/ Manuel F. Cohen
Chairman

Enclosures

ATTACHMENT A

Commissions to Non-Members on Stocks, Rights and Warrants

On stocks selling at $1.00 per share and above the commission on each order shall be not less than the rates hereinafter specified:

(i) On each unit of trading up to and including four units of trading the commission shall be --

2% of first $400 of money involved plus

1% on next $2,000 of money involved plus

1/2% on money involved above $2,400 plus $2.00.

(ii) On all units of trading above four units the commission shall be 1/2% of money involved plus $2.00 per unit of trading.

(iii) On odd lots (less than a unit of trading) same rates as that under (i) above, less $1.00.

(iv) Notwithstanding the foregoing:

a) when the amount involved in a transaction is less than $100, the commission shall be as mutually agreed;

b) the minimum commission charge in any event shall not be less than $6 per order.

In respect of stocks selling at $1.00 and above, an order shall be deemed to include all round lot or odd lot purchases or sales for one account, of a single security, executed on one business day, provided, however, that where an order for five or more units of trading is executed on one business day, all round lot purchases or sales of that security for that account executed in the next nine business days shall be deemed part of that order.

June 26, 1968

The Honorable Manuel F. Cohen
Chairman
Securities and Exchange Commission
500 North Capitol Street, N. W.
Washington, D. C. 20549

Dear Chairman Cohen:

This letter is in response to your May 28, 1968 letter in which you ask that the American Stock Exchange give immediate attention to appropriate modifications of its commission rate structure, including any necessary interim steps. You also directed the Exchange's attention to an enclosed copy of your letter to Mr. Robert W. Haack, President of the New York Stock Exchange. In the Commission's letter to Mr. Haack, it was stated that the present minimum rate structure has led to the development of practices designed to avoid the purported restrictions against the negotiation and the reduction of commission rates. In addition, the letter requested the New York Stock Exchange to make specified changes in its commission rates. Moreover, the letter stated that the Commission will hold public hearings on the commission rate structure of national securities exchanges.

Your letter and the proposals contained in your letter to Mr. Haack have been presented to the Board of Governors of the Exchange. You noted in your letter to Mr. Haack that the minimum commission rate structure does not provide appropriate discounts but permits give-ups directed by institutional managers.

The Exchange recognizes that as a result of the exceptionally rapid growth of institutional investors during the past decade and the very substantial influence which such investors exert on the members of the Exchange community with whom they deal, certain practices have developed which place a severe strain on the commission rate structure as conceived and embodied in the Exchange Constitution. Of particular concern is the type of customer-directed give-up which you describe in your letter to Mr. Haack.

The Exchange has also been carefully reviewing its commission rate structure for some time. In addition, the Exchange has analyzed the Commission's proposed Rule 10b-10 and the responses to this proposal. This extensive review along with recent investigations conducted by the Exchange staff and current information developed concerning give-up practices have prompted the Board of Governors to conclude that such customer-directed give-ups may erode the minimum commission rate structure and are not consistent with such structure. Accordingly, the Board has agreed in principle to eliminate such customer-directed give-ups as are noted above.

The Board of Governors of this Exchange has also agreed in principle that a modification of the present minimum commission rate structure to provide volume discounts is appropriate based on all available information and recognizing the uniqueness of this marketplace.

The Exchange's staff has been directed by its Board to work with the Commission to achieve meaningful and prompt implementation of the Board of Governors' position with respect to discounts and give-ups. The Exchange also plans to submit its legal and economic evidence supporting the setting of minimum commissions which, over the years, has made possible a viable, efficient and regulated auction market.

Sincerely,

/S/ RALPH S. SAUL

RSS:rd

American Stock Exchange

SUBCOMMITTEE ON COMMISSION STRUCTURE

Memorandum

September 20, 1968

To: Members and Member Organizations

From: Subcommittee on Commission Structure

Subject: Interim Commission Schedule

Last April the Subcommittee on Commission Structure, appointed by the Board of Governors to study all aspects of the Exchange's commission rates, sent the membership a memorandum reporting on work already accomplished and suggesting a revised schedule of intra-member rates. The memorandum did not cover commission rates charged public customers. It requested comments and offered an opportunity for appearances before the Subcommittee. A number of comments were received and several members appeared.

On May 28, 1968, the Securities and Exchange Commission notified the exchanges that it would hold public hearings commencing July 1 with respect to commission rates. The Commission directed the New York Stock Exchange either to adopt a rate schedule proposed by the Commission or eliminate minimum commission rates on orders in excess of $50,000, and to reduce floor brokerage rates. It emphasized that the present rate structure did not provide appropriate discounts while permitting give-ups directed by institutional managers.

At the same time, the Commission requested that the American Stock Exchange give immediate attention to modifications of its rate structure, including any necessary interim measures.

In view of these developments, the Subcommittee determined to defer any decision with regard to intra-member rates.

On June 28, the President of the Exchange notified the membership that after considering information developed regarding give-up practices, the Board agreed in principle to modify the commission rate structure to provide for a volume discount and to eliminate customer-directed give-ups.

On August 8, the New York Stock Exchange proposed its own interim schedule of non-member rates providing for volume discounts, an interim schedule of reduced intra-member commission rates and a constitutional amendment prohibiting customer-directed give-ups. Subsequently the Commission ordered the New York Stock Exchange to adopt the Exchange's proposed interim rates or eliminate minimum commissions on orders in excess of $50,000. The New York Stock Exchange is now in the process of submitting its proposed rate schedule to a vote of its membership.

The Subcommittee has considered alternatives to meet the present situation and the recent commitment of the Board with respect to volume discounts and customer-directed give-ups. It reached a number of conclusions which have been reviewed by the Board of Governors and which may be summarized as follows:

Non-Member Commission Rates

The Subcommittee considered the proposed New York Stock Exchange non-member commission schedule and believes it is appropriate for adoption by the American Stock Exchange. It also noted that adoption of

a similar schedule would avoid the difficult automation, computer capacity and operational problems which different schedules would pose for dual members.

The Subcommittee also concluded that if the revised interim rates are approved by the membership they should be made effective on December 5, 1968, the same date the New York Stock Exchange rates are to become effective. This, it was felt, would be helpful to the member firms in effecting the transition to new rates.

The proposed non-member commission schedule is shown in Exhibit I.

Intra-Member Commission Rates

Floor Brokerage

After reviewing various approaches to determining appropriate changes in floor brokerage rates, the Subcommittee concluded that a schedule of rates approximately the same as the test schedule of rates suggested in the Subcommittee's April memorandum would be appropriate. This schedule, shown in Exhibit II, meets the desire of the SEC for a reduction in floor brokerage rates and is in line with the Subcommittee's conclusion last April that some lowering of the floor brokerage rate was necessary and desirable in the best interests of the Exchange and the membership as a whole. A reduction in these rates would bring them more in line with floor brokerage on other exchanges and would benefit members directly responsible for bringing business to the Exchange. A reduction based on volume was considered but rejected because it presented operational problems.

Clearance Rates

With respect to clearance rates to regular members, the Subcommittee concluded that these rates could most appropriately be set by adding to the newly proposed floor brokerage rates the "clearing portion" of the present regular member clearance rates; that is, the portion of the present clearance rates left after subtracting the present floor brokerage rates. The proposed clearance rate schedule is shown in Exhibit III.

Specialist Rates

The Subcommittee concluded that a schedule of specialist rates providing for an adjustment in line with the Subcommittee's view in April is appropriate. It reaffirmed that an increase in specialist rates is essential in order to strengthen the specialist system and provide increasingly effective markets on the Exchange. The schedule is consistent with the Board's position late last year. The Subcommittee believes that this step is a necessary one in the progress of the Exchange. On the New York Stock Exchange, as well as most other exchanges, the specialist receives full floor brokerage on orders left with him for execution. The specialis on the American Stock Exchange earns a commission substantially less than the floor brokerage rate or orders entrusted to him for execution, though he performs substantially the same services and assumes th same risks as the floor broker.

The proposed schedule of specialist rates is shown in Exhibit IV.

Associate Member Rates

The Subcommittee concluded that the associate member floor brokerage and clearance rates should no be changed at this time. It is estimated that the cost to associate members for floor brokerage and clearir will continue to be approximately 40% of gross commission income.

Customer-Directed Give-Ups

After studying information available to it, the Board concluded in June that certain customer-direct give-up practices serve to erode the minimum commission structure and are not consistent with the pri ciple of a minimum commission structure. This led the Board to agree in principle to eliminate su undesirable give-ups.

With these factors in mind, the Subcommittee concluded that the Exchange should amend its Constitution by adding to Article VI, Section 1, the language shown in Exhibit V. The amendment would provide that members and member organizations may not, in consideration of the receipt of business in Exchange securities and at the direct or indirect request of a non-member, give up any work, commissions or other property to which the member or member organization is entitled.

A similiar amendment has been proposed by the New York Stock Exchange.

The comments of regular members, allied members and associate members on the above matters will be most welcome. The Subcommittee would appreciate any written comments by October 11, 1968. These should be addressed to Mr. H. Vernon Lee, Jr., Vice President, Membership Services Division.

Arrangements can also be made with Mr. Lee's office for a personal appearance before members of the Subcommittee. The Subcommittee and the Exchange administration stand ready to answer any questions you may have.

Sincerely yours,

John H. Schweiger, Chairman
Gordon H. Hensley
James J. Lee
Harold J. Mintz
James T. Tobin, Jr.
Robert C. Van Tuyl
John Wasserman

Macrae Sykes
Frank C. Graham, Jr.
Ralph S. Saul
Ex-Officio

Attachments

EXHIBIT I

American Stock Exchange

Proposed Non-Member Commission Rates

Sec. 2 Commission shall be as follows:

(a) The Minimum Commission Rates to Non-Members, on Stocks, Rights and Warrants (hereinafter referred to as Stocks) shall be as follows:

(1) On that portion of an order up to and including 1,000 shares, on stocks selling at $1.00 per share and above commissions shall be based upon the amount of money involved in a single transaction and shall be not less than the rates hereinafter specified:

(i) Subject to the provisions of paragraphs 2(a) (1) (iii), 2(f), 2(h), and 2(l), on each single transaction not exceeding 100 shares, in a unit of trading; a combination of units of trading; or a combination of a unit or units of trading plus an odd lot.

Schedule of Stock Commissions

COMMISSION

2% on first $400 of money involved plus
1% on next $2,000 of money involved plus
1/2% on next $2,600 of money involved plus
1/10% on money involved above $5,000 plus $3

(ii) On odd lots (less than a unit of trading) same rates as paragraph (1) above, less $2.00, subject to the provisions of paragraphs 2(a) (1) (iii), 2(f), 2(h) and 2 (l).

(iii) Notwithstanding the foregoing:

(a) when the amount involved in a transaction is less than $100, the minimum commission shall be as mutually agreed;

(b) when the amount involved in a transaction is $100 or more, the minimum commission charge shall not exceed $1.50 per share or $75 per single transaction, but in any event shall not be less than $6 per single transaction.

(2) On that portion of an order which exceeds 1,000 shares, on stocks selling at $1.00 per share and above, commissions shall be based upon the amount of money involved in a single transaction and shall be not less than the rates hereinafter specified:

(i) Subject to the provisions of paragraphs 2(a) (2) (iii), 2(f), 2(h) and 2(l), on each single transaction not exceeding 100 shares, in a unit of trading; a combination of units of trading; or a combination of a unit or units of trading plus an odd lot.

Money Involved	Commission
$100 to and including $2,800	1/2% of money involved plus $4.00
Above $2,800 to and including $3,000	compute as $2,800
Above $3,000 to and including $9,000	1/2% of money involved plus $3.00
Above $9,000	1/10% of money involved plus $39.00

(ii) The commission on an odd lot of a security in which the unit of trading is 100 shares shall be computed in accordance with the provisions of paragraph 2(a) (1).

(iii) Notwithstanding the foregoing:

(a) When the amount involved in a transaction is less than $100, the minimum commission shall be as mutually agreed;

(b) When the amount involved in a transaction is $100 or more, the minimum commission charged shall not exceed $1.50 per share or $75 per single transaction, but in any event shall not be less than $6 per single transaction.

(3) On stocks selling below $1.00 per share commissions shall be on a per share basis and shall not be less than the following:

Price per Share	Rate per Share cents
1/256 of $1	0.1
1/128 of $1	0.15
1/64 of $1 and above but under 2/32 of $1	0.5
2/32 of $1	0.5
over 2/32 of $1 but under 8/32 of $1	1.0
8/32 of $1 and above but under 1/2 of $1	2.0
1/2 of $1 but under 5/8 of $1	3.0
5/8 of $1 but under 3/4 of $1	3.75
3/4 of $1 but under 7/8 of $1	4.5
7/8 of $1 but under $1	5.25

Notwithstanding the foregoing, when the amount involved in a transaction is less than $100, the commission shall be as mutually agreed; when the amount involved is $100 or more, the minimum commission shall be not less than $6 or the rate per share, whichever is greater.

efinition of single transaction

For the purpose of this Section 2

(1) In respect of stocks selling at $1.00 per share and above, a single transaction shall be deemed to include all purchases or sales for one account, of a single security, pursuant to a single order.

(i) amounting to 100 shares of a security in which the unit of trading is 100 shares

(ii) amounting to less than the unit of trading

(iii) amounting to 100 shares or less in one transaction or a series of transactions, pursuant to a single order entered at a single price or at the market, of a security in which the unit of trading is less than 100 shares. If such series of transactions includes an execution in an amount of less than the unit of trading and the order was at a price not more than the usual odd lot differential away from the limit on the full lot order, such odd lot transaction may be deemed to be a part of the single transaction;

(2) in respect of stocks selling at $1.00 per share and above, an order shall be deemed to include all purchases or sales for one account, of a single security, on the same day, pursuant to a single order. Any odd lot of a security in which the unit of trading is 100 shares shall be deemed to be a separate order.

(3) In respect of stocks selling at less than $1.00 per share a single transaction shall be deemed to include all purchases or sales for one account, of a single security, pursuant to a single order, irrespective of the size of the order.

Determining amount involved in transaction

(g) In determining the amount involved in a transaction, commissions and taxes shall be disregarded.

Special Rates

(h) When the commission on any order computed in accordance with the provisions of paragraphs 2(a) (1) and 2(a) (2) would be in excess of $100,000, the minimum commission to be charged shall be $100,000.

(i) Notwithstanding the other provisions of this Article, when Rights or Warrants are admitted to dealings upon the Exchange whether on an issued or when issued basis, and when other securities are admitted to such dealings on a when issued basis the Board of Governors may determine special minimum rates of commission on any and all transactions in such rights, warrants or other securities. Such special rates so prescribed or provided by the Board of Governors shall be deemed to be the rates prescribed in this Article. Unless special rates have been so determined the minimum rates of commission prescribed in this Article shall apply.

(j) The minimum clearing charges to members, member firms and member corporations applicable to stock, warrant and right transactions effected by them for their own account shall be as follows:

Round lots:	$1.00 a share and over—$3.00 for combined receipt and delivery Under $1.00 a share—as mutually agreed
Odd lots:	Ten shares and over—$1.00 on each side Under ten shares—as mutually agreed
Warrants:	Same as stocks
Rights:	As mutually agreed.

Supervised order

(k) When an order is supervised by a regular member, not a partner in or a director of the particular member firm or member corporation whose business he is supervising, the specialist to whom the order is given, either by the member supervising such order or by the telephone clerk of the specific firm or corporation whose name is on the order, shall bill such member supervising the order the specialists' Floor rate and such member shall, in turn, bill the firm or corporation whose name is on the order slip the regular member give-up rate.

Public obligations and called securities

(l) Commission rates to members or non-members may be charged, as mutually agreed, on obligations of the United States, Puerto Rico, Philippine Islands and States, Territories and Municipalities therein, and on securities which, pursuant to call, are to be redeemed within twelve months, unless commission rates on any or all such securities are prescribed in this Section or by the Board of Governors.

American Stock Exchange

Present and Proposed Floor Brokerage (Give-up) Rates to Regular Members

Security Price Range ($)	Present Floor Brokerage ($)	Proposed Floor Brokerage ($)
$1 under $2	1.75	1.45
$2 under $5	2.05	1.60
$5 under $10	3.30	2.45
$10 under $20	4.00	3.60
$20 under $40	5.10	4.25
$40 under $100	5.65	4.50
$100 under $150	6.50	5.05
$150 under $200	6.50	5.25
$200 and over	6.50	5.80

EXHIBIT III

American Stock Exchange

Present and Proposed Regular Member Clearance Rates

Security Price Range ($)	Present Clearance ($)	Proposed Clearance ($)
$1 under $2	2.75	2.45
$2 under $5	3.20	2.75
$5 under $10	4.90	4.05
$10 under $20	6.05	5.65
$20 under $40	7.75	6.90
$40 under $100	8.60	7.45
$100 under $150	9.75	8.30
$150 under $200	9.75	8.50
$200 and over	9.75	9.05

EXHIBIT IV

American Stock Exchange

Present and Proposed Specialist Rates

Security Price Range ($)	Present Specialist Rates ($)	Proposed Specialist Rates ($)
$1 under $2	.70	.90
$2 under $5	.80	1.05
$5 under $10	1.35	1.55
$10 under $20	1.70	2.30
$20 under $40	2.00	2.70
$40 under $100	2.20	2.90
$100 under $150	2.60	3.25
$150 under $200	2.60	3.35
$200 and over	2.60	3.70

American Stock Exchange

Constitutional Amendment

The following additional language is to be added to the first paragraph of Article VI, Section 1, of the Constitution:

"No member, member firm or member corporation shall, in consideration of the receipt of business in securities dealt in on the Exchange and at the direct or indirect request of a nonmember or by direct or indirect arrangement with a nonmember, make any payment or give up any work or give up all or any part of any commission or other property to which such member, member firm or member corporation is or will be entitled."

C
P
Y

AMERICAN STOCK EXCHANGE

March 26, 1970

The Honorable Hamer H. Budge
Chairman
Securities and Exchange Commission
Washington, D.C. 20549

Dear Chairman Budge:

I am enclosing a statement by the Exchange urging prompt action by the Commission on an interim change in commission rates. We believe that the need for an interim change in present commission rates has been demonstrated.

Our statement also describes a procedure proposed for the future for determining and monitoring subsequent revisions in commission rates to make those rates more responsive to changing conditions in light of the objectives of the Exchange Act. We feel that it would be helpful to make an oral presentation of the proposed procedure described in the statement and, accordingly, request an opportunity to be heard on a date convenient for the Commission. We believe that the Exchange's presentation--directed to future changes in the rate-making process--will be of interest and of help to the Commission.

We respectfully request that the enclosed statement be included in the record of the commission rate hearings.

Sincerely,

s/ Ralph S. Saul

Enclosure

C O P Y

AMERICAN STOCK EXCHANGE

March 26, 1970

Securities and Exchange Commission
500 North Capitol Street, N.W.
Washington, D.C. 20549

Dear Sirs:

The American Stock Exchange wishes to express its views to the Commission concerning the urgent need for an increase in financial revenue for member organizations, and to urge prompt action on the proposal of the New York Stock Exchange to impose a service charge on each transaction.

The Board of Governors of this Exchange has given extensive consideration to this matter and has concluded that in view of the serious need to provide immediate additional income, particularly to firms engaged primarily in the retail commission business, the imposition of such a service charge is the most appropriate means under the circumstances to accomplish the desired objective. The Board is, therefore, prepared to adopt a rule imposing a service charge of $15.00 on each transaction involving 1,000 share or less, limited, however, to not more than 50% of the existing commission applicable to such transaction.

The Exchange is aware of the submission by the New York Stock Exchange of an extensive study prepared by National Economic Research Associates, Inc. recommending major revisions in the entire structure and level of commission rates. The Exchange appreciates that review and analysis of this study and underlying data by the staff of the Commission is expected to be time-consuming. In additio the Commission has invited comments regarding the study from all interested parties.

The Board of Governors of this Exchange has concluded that it would be extremely dangerous to postpone any action concerning commission rates until such review and analysis has been completed. It believes there is a pressing and overriding need for immediate adjustments in the level of income derived from commissions on certain types of transactions in order to preserve the depth and liquidity of Exchange markets, to assure continued, direct access to the Exchange marketplace by the general public, to bolster the financial condition of member organizations, and thus to protect the interests of all investors. The proposal to impose a service charge involves only such limited revision to the commission rate structure as the Board believes absolutely essential at this time to help achieve these objectives and to stem certain trends which, if unchecked, may seriously undermine Exchange markets and impair the ability of public investors to freely buy and sell listed securities in a regulated exchange auction market.

We recognize that a great deal of work remains to be done in connection with resolving all of the issues relating to commission rates. The American Exchange, as more fully described below, is devoting a considerable effort to the development of procedures for establishing commission rates in the future. We believe these procedures will prove much more meaningful than those available in the past for determining rates. However, the current need for an adjustment is so urgent that neither the Exchange nor the Commission, in carrying out their statutorily imposed duties, should delay in implementing an interim change.

Need for Direct Public Participation in the Securities Markets.

The evidence presented in the Commission's rate inquiry demonstrates clearly the fundamental changes that are taking place in the public securities markets. The growth in institutional trading is progressing at a much more rapid rate than that of individual public investors. Transactions originating with institutions as a percentage of total public share volume on the New York Stock Exchange have increased from 29.4% in 1959 to 54.4% in 1969. Studies of trading on the American Exchange indicate a similar growth pattern even though institutional trading as yet represents a smaller portion of tota volume. During a two-year period -- from 1967 to 1969 -- institution trading on this Exchange as a percentage of total public share volume increased from 15.6% to 22.9%.

The annual growth rate in institutional trading on this Exchange between 1967 and 1969 (as a percentage of total public share volume) was 47.5%, whereas trading by individuals grew at an annual rate of only approximately 16.5%. If these growth patterns are sustained by both individuals and institutions in the future, institutional share volume on the Exchange will attain the level experienced on the NYSE in 1969 -- approximately 54% of public share volume -- in about six years. In short, our market, which in the past has principally served individual investors, is likely in less than six years to become weighted on the side of institutional investors if current trends continue unabated -- and the NYSE will be primarily an institutional market by that time. Attached as Exhibits A and B are the results of studies for 1967 and 1969 respectively, comparing transactions, shares and dollar volume on this Exchange for individuals and various categories of institutional investors.

The growing influence of institutional participation on the Exchange is illustrated further by the growth of block transactions -- trades involving 10,000 shares or more. Block trading as a percentage of total share volume has grown at the rate of 92% per annum between mid-1966 and 1969, a rate 3.7 times faster than the growth of total share volume during this period. The 1969 study indicates that approximately 73% of all block transactions on the Exchange are traded by institutional customers. The growth in block trading has continued despite the decline in overall volume during the past few months. Although detailed analysis of current data is not yet available, a preliminary review of January 1970 trading indicates that share volume represented by blocks is up 20% over January 1969 although total trading volume has declined more than one-third.

The significance of these trends must not be underestimated in terms of the impact which institutionalization is having on Exchange markets. The ability of the Exchange to accommodate the growth of institutional trading is to a very large extent dependent upon a corresponding growth in the flow of orders from individual investors. Without the individual investor the market tends to lose the benefits of a public pricing mechanism and is likely to become largely a negotiated market with more and more trades being converted from agency transactions to dealer transactions. It is readily apparent that any significant decline in participation by individual investors

will seriously affect the depth and liquidity of the public auction market -- a result which nearly every participant in the pending commission rate hearings has conceded would be inimical to the interests of all investors, individuals and institutions alike.

Circumstances Threatening Continued Public Participation.

At the time the Commission initiated its present commission rate inquiry in 1968 the securities industry was reaching the peak of an unprecedented period of growth. The volume of trading in all markets had multiplied at a rate previously unknown and had far outdistanced the most optimistic projections made only a few years earlier. Securities prices had maintained a general upward trend for several years with only sporadic interruptions. All classes of investors were anxious to see their capital fully invested. The emphasis of many portfolio managers changed from conservation of capital to performance measured by gains from rapid turnover of securities holdings. Brokerage firms were operating at a profitable level and were expanding their facilities to meet the increased volume. Although this growth was not spread evenly over the entire spectrum of public investors, the sheer magnitude of trading volume tended to assuage any fears concerning the liquidity of securities markets.

Events of the past year have evidenced a dramatic reversal in many of these trends. Trading volume has subsided to a marked degree. The general level of securities prices has declined substantially. Many member firms have either reported losses or drastically reduced profit margins. These developments have occurred at a time when there has been increasing pressure on member firms to improve their operating procedures and to make additional investments in facilities and highly skilled personnel so as to meet the needs of their customers. There have been a number of mergers by member organizations in an effort to improve overall capital positions. Some have been forced to liquidate and have required financial assistance to protect the funds and securities of their customers. Many firms have found that they have excess capacity as a result of expansion during earlier years to meet increased volume and to solve lingering back-office problems, but they have also found that high fixed costs in connection with such expansion cannot be promptly reduced or eliminated. The climate in the securities industry in 1970 is substantially different from that in early 1968, and we see

major changes taking place in terms of the allocation of capital and resources of member organizations which may permanently reshape the securities markets -- changes which as a result of economic pressure are designed primarily to improve the servicing of institutional customers and largely ignore individual investors.

The most immediate impact of these changed conditions has been a decline in the profits of member organizations oriented to serving individual public customers. It is these firms that have found the greatest difficulty in generating adequate income to meet ever increasing costs. The rising costs of conducting a brokerage business have been well documented and can be measured by any number of indices. Such increased costs must be considered in light of the fact that there has been no increase of any kind in public commission rates for more than a decade. Under these circumstances, a significant consideration is the way in which member organizations have reacted to the cost-profit squeeze.

In an effort to obtain current information concerning member firm reaction to declining profit margins, we have interviewed a number of member organizations during the past couple of months and we feel that the results of these interviews indicate that measures are being taken which may adversely affect public investors. While the majority of the firms involved in our survey were heavily committed to the retail commission business, we endeavored to include a broad cross section of our membership. The firms surveyed accounted for approximately one-third of the trading volume on the Exchange during 1969. Without exception these firms voiced the opinion that the small, individual investor's business is unprofitable at the current commission rate level.

More importantly, the survey disclosed strong indications that many firms are no longer encouraging or seeking to develop the business of the small investor and, in fact, in many instances they have adopted or are developing policies designed to discourage this type of business. For example, several firms which have traditionally concentrated on retail commission business have recently altered their registered representative compensation policies to provide greater rewards for producing large volume orders while reducing the amount of compensation payable in connection with small orders.

It is also apparent that administrative steps are being taken to emphasize and service larger volume orders as opposed to accounts which involve only small trades. Some firms are imposing a minimum initial investment of from $2,000 to $5,000. Branch offices in smaller cities are being closed. The physical location of new offices is sometimes being selected to avoid walk-in business. Added emphasis is being placed on the development of institutional business at all levels in many firms.

An equally important factor is that many firms are seeking or developing other lines of business such as investment advisory services, real estate investments, writing of options, establishing their own mutual funds and trading in commercial paper. Another trend indicated by our interviews is that more firms are now willing to utilize their capital to "block position" as a means of increasing their institutional business. The attached Exhibit C provides a more detailed summary of the views expressed by the member firms we contacted.

There are other factors which at the present time tend to deter member organizations from seeking to develop small investor business. They have been forced to operate in an unstable environment which mitigates against long-range planning or major capital commitments. There is uncertainty as to how the controversy over negotiated rates versus fixed minimum commissions will ultimately be resolved; there is no clear policy commitment by the regulatory agencies aimed at preserving the central exchange markets or assuring continued direct access to such markets by individual investors; there is the spectre of prolonged and exhaustive study and analysis before any increase in revenues can be effected to correct a demonstrated drain on profits.

Direct public participation in the securities markets is also threatened by the attitudes of individual investors who appear to have a growing sense that they cannot receive service on an equal basis with institutions. Last summer a survey was conducted for the Exchange by Louis Harris and Associates, Inc. concerning the attitudes and opinions of investors towards the securities markets and to gain insight with respect to their intentions and anticipations in relation to investing practices. A significant conclusion of this survey was that even experienced investors believe that institutions are given preferential treatment by the securities industry.

Alternatives Available to Member Organizations.

Even without resorting to an exhaustive analysis of cost data, it is quite apparent that operating costs of brokerage firms over the past twelve years, since the last commission rate increase, have been rising at an alarming rate and that income generated from public commission business has not been sufficient to offset these increased costs. As indicated above, our survey of member organizations confirms that this cost-profit squeeze has had the most severe impact on those firms heavily committed to the retail commission business.

Every firm the Exchange interviewed in this category indicated that it had experienced either a loss or substantially reduced profits during 1969. Moreover, all of these firms are determined to take prompt steps to correct this situation and they are convinced that they cannot unilaterally raise commissions above the prescribed minimum as a means of making the retail commission business profitable. The Exchange believes that the measures taken or contemplated by many of these firms to discourage the small investor's business -- steps which the firms feel are an economic necessity -- are contrary to the principles underlying the Exchange Act and the objectives sought to be achieved in providing for regulated markets -- that is protection of the investing public.

Faced with the probability of continuing losses or only marginal profits in handling retail commission business, such firms are increasingly turning to other sources of business that appear to be more profitable. This includes concentration on institutional business, engaging to a great extent in dealer transactions, implementing investment advisory services, developing and selling their own mutual funds, writing options, trading in commercial paper, developing real estate investments, etc. Many of these endeavors may require additional capital but they do not necessarily involve the high degree of fixed overhead costs necessary in maintaining facilities, data processing equipment, personnel, branch offices and communications systems for handling of retail commission business.

Risks in Delaying Action on Commission Rate Revisions.

In addition to the possible impact which may result from a reallocation of resources and capital by member fims, consideration must be given to the danger of postponing action on commission increases while many firms are experiencing serious financial difficulties. Corrective measures by the firms themselves may not serve to reverse this trend. As indicated above, several large commission firms have reported severe losses this past year and some have had to supplement their capital on an emergency basis. There have been a number of mergers in the industry resulting from financial difficulties and in severe situations firms have had to be liquidated. The adoption of provisions to provide additional means of raising capital may be largely illusory if the risk factor of investing in brokerage firms is too great.

Exchange member firms hold billions of dollars in securities and funds of countless public investors. Public confidence in the financial stability of these firms is essential to the overall economy. Serious difficulties that befall any one firm not only have a serious impact on its customers but also affect all other financial organizations with which the firm has dealings.

We also believe that there are other serious policy questions which must be considered. Is the public interest served if only the very large, multi-purpose firms can survive fluctuations in trading volume and continue to handle public commission business? Are smaller firms oriented to dealing with the public to be given a fair opportunity to compete? To what extent is investor protection sacrificed if firms are forced to cut back on services and operations in order to stay in business? How can competent personnel be attracted to the industry and be properly trained to carry out their functions in handling investments for the public if the level of anticipated compensation is not competitive with other industries? The current profit squeeze associated with the retail commission business is having its impact on all of these matters.

Problems with Past Approaches to Commission Rate Changes.

Past practices in implementing commission rate changes have been subjected to criticism from various sources. Part of the problem has been the lack of any definition as to the objectives which commission rates should be designed to achieve and the failure to develop appropriate procedures to assure the responsiveness of commission rates to changing conditions.

In this connection, there has been no machinery for continually monitoring commission rates or for determining whether existing rates are achieving desired results. No process has been developed for regularly obtaining the views of all segments of the industry, and proposed changes have seldom been submitted for comment to those likely to be most affected. Little effort has been made to develop and apply economic tools in setting rates or measuring the consequences of changes. The impact of rate changes on different classes of investors has received relatively little attention.

Acknowledgment of past imperfections is not an attempt to either disparage nor excuse. It is simply a recognition that today better tools are available -- partly because of advanced technology and partly because there is a better understanding of the industry and improved reporting of data.

Steps to Improve the Rate-Making Process.

Since the commencement of the commission rate inquiry, the American Exchange has embarked on a program to determine how the rate-making process can be improved -- particularly with respect to measuring the economic impact of commission rate changes and developing procedures to make the rate-making process more responsive to changing market conditions. In July of 1969 we submitted to the Commission an interim report concerning our efforts in this direction. We outlined a number of public interest objectives which we believe are relevant to the fixing of commission rates and pointed out the need for developing tools to assist in predicting the impact of rate changes in relation to such public interest objectives.

In our July 1969 presentation we indicated our disagreement with the position that the question of commission rates can be viewed in isolation or can be answered in simplistic terms. We believe that economic analysis of the consquences and of behavioral patterns likely to result from changes in commission rates must go hand in hand with measuring direct financial impact, and that such consquences and behavioral patterns must be considered in the light of public interest objectives. Before this can be accomplished there must be agreement as to the objectives. Specific policy decisions must be articulated with respect to such matters as the desirability of preserving

the central auction markets, assuring continued public access to such markets, maintenance of the public pricing mechanism, achieving fair treatment of both large and small investors, maintenance of adequate levels of services to investors, developing sufficient capacity, improving self-regulation, providing a fair opportunity for small brokerage firms to compete, etc. Only by appropriate consideration of all of these factors on an integrated basis can the rate-making process be developed into an effective means of protecting the interests of investors, providing a reasonable level of income to member organizations and assuring the public character of the securities markets.

In an effort to obtain independent guidance and advice concerning the approach to be taken to these problems, the Exchange engaged Cambridge Research Institute to assist in developing a long-range program that would help us to both measure impact and predict consequences of commission rate changes. A summary of the results of Cambridge Research Institute's work is attached as Exhibit D.

The Exchange believes that this suggested approach may serve as the groundwork for developing the necessary procedures to measure the economic impact and possible consequences of proposed commission rate changes through the use of advanced computer technology and the application of economic principles. The computer programs prepared by Cambridge Research Institute for this purpose and the steps which they suggest for gathering and analyzing the necessary data are only a start. They, of course, had to rely on available data -- data which is now nearly three years old and thus reflects market conditions which have little relationship to the situation today. Moreover, the data which was available was not gathered for the purpose of analyzing the impact of changes in commission rates and consequently was not in a form to provide meaningful results. Moreover, this was an attempt to break new ground and it was expected that the initial effort would require further development based on improved reporting of data and actual experience in applying the suggested procedures.

This project to date has proven to be extremely expensive to the Exchange. It is a pioneering effort and a great deal of work remains to be done. It is possible that completion of all phases of the project as outlined by Cambridge Research Institute may be beyond the capabilities and resources of the American Exchange alone. However, we believe the basic approach is sound and that with up-to-date data and improved reporting requirements, this technology can be brought to the point where it will prove to be a valuable tool in the rate-making process.

Procedures for Periodic Review of Commission Rates.

The Exchange has considered the need for developing a continuing program for establishing and monitoring commission rates which will be responsive to changing conditions and which will be directed to achieving public interest objectives along the lines set forth in our July 1969 presentation. Basic to this rate-making approach is the formation of a facility at the Exchange which will have responsibility for collecting and processing data on a continuing basis so that periodic studies concerning the effects of existing rates or of proposed changes in rates can be carried out on a sound factual basis and can be properly documented.

It is anticipated that periodically an in-depth review will be made of commission rates. This process may include the forwarding of summaries of data collected on a continuing basis to member firms together with comments by the Exchange staff concerning current problems involving commission rates. Member firms would be requested to submit recommendations as to any revisions they believe appropriate and a record would be made of all such recommendations. Proposed changes in the rate schedule could be devised, relying on the submissions received from member firms, the data collected and analyzed over a period of time and the projected consquences resulting from such proposed changes, or in the alternative it might be determined that no revisions were warranted. If it were found that changes in the commission rate schedule appeared justified, the Exchange could publicly announce its intention to propose certain revisions and its reasons therefor, and invite comment on the new rate schedule from member firms and other interested parties. Thereafter, the Exchange could review the proposed schedule with the Commission in light of the record made and the data on which its decision concerning necessary revisions was reached, prior to submitting the proposal to the membership for approval.

Such procedures would permit focusing on explicit issues in the rate-making area and should provide some measure of negotiation with respect to such issues in a manner consistent with a regulated industry. If these procedures prove both workable and beneficial, it may be possible to establish machinery by which the Board of Governors could make appropriate modifications to existing commission rates

within certain defined limits without having to resort to a vote of the membership in every case. This would enable the Exchange to respond more rapidly and flexibly to changing conditions while at the same time reserving for the membership the authority to make major revisions in commission rates.

Sincerely,

s/ Ralph S. Saul

EXHIBIT A

RESULTS FROM THE 1969 TRANSACTIONS REVENUE STUDY

ACCOUNT TYPE	TRANSACTIONS		SHARES			DOLLAR VOLUME		
	Number	Percent	Number	Percent	Average Shares	Dollars	Percent	Average Dollars
Individuals	37,448	90.0	6,513,082	77.1	173.9	129,279,530	69.3	3,452
Commercial Banks or Trusts	936	2.3	493,343	5.8	527.1	16,035,498	8.6	17,152
Non-Member Broker-Dealers	1,063	2.6	264,228	3.1	248.6	6,011,135	3.2	5,652
Mutual Funds	197	0.5	413,160	4.9	2097.3	13,519,234	7.3	68,626
Investment Partnerships	433	1.0	239,803	2.8	553.8	7,019,188	3.8	16,211
Non-Insurance Private Pension Funds	116	0.3	56,333	0.7	485.6	1,827,086	1.0	15,751
Life Insurance Companies	16	0.04	27,410	0.3	1713.1	901,101	0.5	56,319
Non-Life Insurance Companies	66	0.2	30,280	0.4	458.8	673,921	0.4	10,211
Non-Bank Trusts or Estates	205	0.5	49,394	0.6	240.9	1,264,629	0.7	6,169
All Other Institutions	1,109	2.7	362,143	4.3	326.5	9,981,756	5.4	9,001
TOTAL	41,589	100.0	8,449,176	100.0	203.2	186,513,077	100.0	4,485

EXHIBIT B

RESULTS FROM THE 1967 PUBLIC TRANSACTION STUDY

ACCOUNT TYPE	TRANSACTIONS		SHARES			DOLLAR VOLUME		
	Number	Percent	Number	Percent	Average Shares	Dollars (billions)	Percent	Average Shares
Individuals	28,701	90.3	4,805,696	84.4	167.4	88,913,234	76.9	3,098
Commercial Banks	519	1.6	247,676	4.4	477.2	11,200,926	9.7	21,582
Non-Member Broker-Dealers	757	2.4	193,428	3.4	255.5	3,125,261	2.7	4,128
Mutual Funds	145	0.5	88,443	1.6	610.0	4,126,900	3.6	28,461
Non-Financial Corporations	354	1.1	93,657	1.6	264.6	2,188,556	1.9	6,182
Investment Clubs	310	1.0	35,661	0.6	115.0	748,880	0.7	2,416
All Other Institutions	992	3.1	230,705	4.1	232.6	5,342,043	4.6	5,389
TOTAL	31,778	100.0	5,695,266	100.0	179.2	115,645,793	100.0	3,639

EXHIBIT C

SUMMARY OF VIEWS EXPRESSED BY FIRMS SURVEYED

1. All of the firms surveyed believe that small ticket business is unprofitable.

2. All of the firms in the survey which do a public business have decided to discourage small order business or decrease their emphasis on such business.

   A. Change registered representative compensation policy so as to provide greater reward, and thus greater incentive, for large ticket business.

   B. Require minimum initial investment before accepting an account.

   C. Purge all accounts which do not maintain a minimum equity.

   D. Purge inactive account.

   E. Impose a minimum commission charge per ticket.

   F. Close branch offices in smaller cities.

   G. Select physical location of branch office so as to avoid walk-in business.

   H. Curtail or discontinue advertising in public media.

3. All of the firms surveyed have placed greater emphasis on institutional business in recent months.

   A. Have established separate institutional sales departments.

   B. Have augmented existing institutional sales departments.

4. The majority of the firms surveyed have increased their emphasis on block trading.

   A. Many will commit capital to block positioning.

   B. Many have established separate block trading departments.

EXHIBIT C
Continued

5. A vast majority of the firms surveyed have entered or decided to enter into new lines of business.

   A. Real estate.

   B. Investment advisory service.

   C. Selling their own mutual fund.

   D. Options.

   E. Commercial paper.

6. All of the firms surveyed report that operational costs have increased substantially.

   A. Major factor is salary demands of clerical, supervisory and professional personnel.

   B. Cost of installation, maintenance and operation of automation equipment.

7. All of the surveyed firms report that there exists little if any possibility of reducing these operations costs.

   A. Necessity of maintaining excess capacity.

   B. Anticipation of even greater increase in operations payroll because of limited labor supply.

EXHIBIT C
Continued

DESCRIPTIVE CHART OF FIRMS SURVEYED*

	Nature of Business	% of 1969 Total ASE Volume	No. of Branch Offices	No. of Registered Representatives	Loss or Decrease in Profits in 1969	Increased Operational Costs in 1969
Firm A	Predominantly Retail	2.49%	105	1,500	YES	YES
Firm B	Predominantly Retail	1.77%	96	1,100	YES	YES
Firm C	Predominantly Retail	4.14%	123	1,700	YES	YES
Firm D	Predominantly Retail	1.78%	70	1,250	YES	YES
Firm E	Predominantly Retail	1.11%	68	800	YES	YES
Firm F	Predominantly Retail with Broad Mix	7.87%	159	2,300	YES	YES
Firm G	Predominantly Retail	2.02%	59	680	YES	YES
Firm H	Predominantly Retail	2.74%	95	1,500	YES	YES
Firm I	Predominantly Retail	1.79%	57	1,000	YES	YES
Firm J	Predominantly Retail	2.59%	83	1,300	YES	YES

* Represents 30.98% of volume on American Stock Exchange for 1969.

EXHIBIT C
Continued

	Nature of Business	% of 1969 Total ASE Volume	No. of Branch Offices	No. of Registered Representatives	Loss or Decrease in Profits in 1969	Increased Operational Costs in 196
Firm K	Retail, Institutional, Corporate Finance	.77%	13	175	NO	YES
Firm L	Institutional Retail	.734%	13	230	NO	YES
Firm M	Less than 50% Commission Business	.575%	19	180	NO	YES
Firm N	Predominantly Correspondent, Small Institutional	.7252%	--	--	NO	YES
Firm O	Correspondent, Corporate Finance, Small Retail	1.48%	6	38	NO	YES

EXHIBIT C
Continued

	Increased Emphasis On Institutional Business	Experienced Increase in Block Volume	Will Block Position	New Lines of Business Established or Contemplated	Change in RR Compensation Policy Established or Contemplated	Minimum Per Ticket Charge Established or Contemplated
Firm A	YES	YES	YES	YES	YES	YES
Firm B	YES	YES	NO	YES	YES	YES
Firm C	YES	YES	YES	YES	YES	YES
Firm D	YES	YES	NO	YES	YES	NO
Firm E	YES	YES	NO	YES	YES	NO
Firm F	YES	YES	YES	YES	YES	NO
Firm G	YES	YES	NO	YES	YES	NO
Firm H	YES	YES	YES	YES	YES	YES
Firm I	YES	YES	NO	YES	YES	YES
Firm J	YES	YES	NO	YES	YES	YES
Firm K	YES	YES	YES	YES	YES	YES
Firm L	YES	YES	YES	YES	YES	YES
Firm M	YES	YES	YES	YES	YES	NO
Firm N	YES	YES	NO	NO	--	--
Firm O	YES	YES	NO	NO	NO	NO

EXHIBIT I
3/17/70

THE AMEX COMMISSION RATE STUDY

This statement describes a methodology that CRI has developed on behalf of the American Stock Exchange. The methodology was designed to help in answering the following kind of question: If a new commission rate structure is introduced on the exchanges, how will the new rate affect the operations of the exchanges and their members; and how will these consequences, in turn, affect the public interest?

I. The Methodology in Brief

Vast changes are going on in the securities business and in the public's use of the securities markets. As these changes occur, they repeatedly raise the question of the desirability of changing the commission rate structure on the nation's securities exchanges. In order to explore the desirability of any proposed change, one wants to be able to estimate some of its consequences in advance. Is there some systematic way of exploring these consequences?

Obviously, serious estimates of this sort require a formal method of estimation. But they also require experience and judgment. The challenge is to find a way of blending technique and judgment to produce reasonable and credible results.

We begin with the fact that a certain pattern of trading already exists on the exchanges. Beginning with the existing pattern, any proposed change in commission rates can be looked at with the following set of questions in mind:

1. If the proposed commission rate were put into effect and if existing patterns of trade were to continue unchanged on the exchanges, what would happen to the commission income of member firms? (Below, we will call these results the "first-round effects" of a commission rate change.)

2. The chances are, however, that any large changes in commission rates would also generate changes in trading patterns on the exchanges. If the proposed commission rate changes were put in effect, what changes in trading patterns do they seem likely to induce? And given these changes, what would happen to the commission income of the member firms? (We shall be calling these results the "second-round effects".)

3. Finally, these changes in commission rates and in market performance will have all sorts of consequences that bear on the public interest. CRI was well aware that "the public interest" could not be precisely defined, nor did it attempt to sharpen the meaning of the term. However, a number of eminent economists, in hearings before the SEC, had previously identified various criteria reflecting "the public interest". Many of these criteria, listed in Appendix A, were of the sort that could be linked to crude quantitative indexes. A criterion such as "preservation of a central auction market", for instance, could be linked to changes in the number, size, and geographic distribution of member firms. CRI's

methodology, therefore, is intended to link the changes in commission rates and in market performance to the changes that might ensue in the "public interest" criteria.

The remainder of this memo explores the methodology associated with each of these three stages: measuring the "first-round" effects; measuring the "second-round" effects; and relating these effects to changes in the "public interest" criteria.

II. First-Round Effects

How does one go about measuring the impact of any given change in the commission rate structure on commission income, assuming that the patterns of trading themselves are not affected by the commission rate change?

A. The Starting Point

Fortunately, the exchanges already have some experience with collecting the data that provide a platform for such measurement. The basic data consist of a detailed record of the transactions effected on the exchange for any day or any given group of days. For each such transaction, a record is made of:

1. the number of shares bought and sold;
2. the price per share;
3. the type of customer, classified according to whether an individual, bank, mutual fund, etc.

4. if an individual, his age, sex, geographic location, and estimated income;

5. approximate time the stock was held;

6. whether the stock was purchased with cash or on margin.

Inevitably, the collection and storage of data of this sort involve a very considerable effort. One day's transactions on the American Stock Exchange, according to our experience, involves over 32,000 transactions. Following the pattern suggested above, 18 bits of information have to be recorded for each transaction, making a total of nearly 600,000 pieces of information in all. Nevertheless, CRI has devised a series of data storage and data retrieval programs that will permit the ready handling of data of this sort, without limit as to the number of trading days to be analyzed. The CRI system is referred to in the remainder of this memo as the CRI EXCHANGE DATA SYSTEM.

B. The First-Round Analysis

Once figures of this sort have been collected and stored, they can begin to answer all sorts of "first-round" questions. To gain an understanding of the versatility of the analysis, picture a table along the following lines:

PROPOSED COMMISSION RATE SCHEDULE X:

Commissions Generated by Transactions on AMEX,
Based on Transactions on (date)
(Figures shown in dollars of commissions)

Member Firm Name	Customers by Type: Individual	Bank	Mutual Fund	. . . . .	All Customers
Alpha					
Beta					
Gamma					
-					
-					
-					
Omega					
All Firms					

The CRI EXCHANGE DATA SYSTEM, now in the possession of AMEX, has the capability of creating tables of this sort, so long as the data are based on the transactions of any day or days that have been stored in its data file. The figures in the table can be computed for any commission rate schedule, actual or hypothetical. Obviously, therefore, the same kind of table can be prepared for the differences in commission revenue between any two schedules.

The table above, however, is no more than illustrative of the capabilities of the CRI EXCHANGE DATA SYSTEM. The table represents only one possibility for computing commission revenues and commission revenue changes by categories. One could, for instance, alter the categories across the top of the dummy table above so that, instead of breaking down the figures by customer types, the figures are

broken down according to size of transaction. A sample table of this sort, would look as follows:

Member Firm Name	Transactions by Size				All Transactions
	$1 - $500	$501 - $1000	$1001 - $10,000	....	
Alpha					
Beta					
Gamma					
-					
-					
-					
-					
Omega					
All Firms					

These illustrations could be carried much further. Margin transactions could be distinguished from cash; short-term holdings from long; high priced stocks from low; and so on. Moreover, cross-categories can be presented so that an analyst can distinguish the "first-round" effects on, say, the small blocks of individual traders from the effects on the large blocks of such traders.

Although the sample tables just presented list their results by individual firms, the results can be presented just as readily by categories of firms, as long as a basis exists for classifying each firm according to some meaningful category. For instance, firms can be classified according to size; according to the type of service

provided to the public; according to membership affiliations; and so on. Once each firm is so typed, all the figures that are available by individual firms can readily be provided by each type of firm. The present version of the CRI EXCHANGE DATA SYSTEM has a built-in capacity for such classification, based on data already obtained from AMEX. These data included some 48 separate pieces of information available for some or all of 667 firms. The classification system can be extended as the data describing the firms are extended and refined.

III. The Second-Round Effects

A great deal can be learned simply by scanning the results generated as the "first-round" effects of any proposed commission rate change. But the simplifying assumption -- "assuming that the change in rates does not affect the pattern of trading" -- will unavoidably limit the credence to be accorded the observed results. For this reason, one is obliged to push off from the seemingly solid footing of the "first-round" into the more uncertain territory of the second round.

A. The Approach

Early in the study, CRI had recognized that any change in the commission rate structure could have far-reaching consequences on the behavior of member firms and the behavior of customers. If the rate changes were drastic enough, customers and member firms would both change their ways of doing business. The patterns of trade portrayed in the base data would give way to something else. One would have to guess at what that "something else" would be before he could gauge the public interest effect.

One of the past weaknesses of studies of commission rate changes, it was recognized, was a failure to take these possible changes in

behavior into account when estimating the effects of proposed alternative commission rate structures. But how to take them into account?

One thing was sure. However desirable it might be in the abstract, it would be hopeless to try to estimate the effect of any alternative commission rate structure upon every possible customer type, broken down by every possible type of member firm for each security price level. In the abstract, the number of such categories for comparison would come to about 3,500 possibilities: 7 customer types times 50 member firm types times, say, 10 security price levels. If six different commission rate schedules were to be compared with the present schedule and with one another, the 3,500 possibilities would rise to 73,500 possibilities, an absurdly high total. Obviously, therefore, one would have to concentrate his analysis on the customer-firm-transaction categories where the first impact of a rate change would be very large.

But, how to determine these categories? To pinpoint the categories, it was necessary to have a capability for first-round analysis that could sort the transactions by many different combinations of firm types, customer types, security price ranges, or other relevant criteria -- and to do all this expeditiously and flexibly. The CRI data system has been designed with these needed capabilities in mind. It permits the analyst to scan first-round effects, classified in various meaningful ways. This increases the chances that one can pinpoint the areas where market operations might be substantially affected by a proposed commission rate change.

B. The Follow-up

Since any proposed change in commission-rate structure has its own distinctive effects, one cannot say in advance just which areas of follow-up would be most necessary. Let us suppose, however, that a structure were proposed whose first-round effects seemed to be concentrated mainly in two areas. One of the assumed first-round effects would be to add greatly to the income of any firm that set itself up to handle small-lot individual business; the second would be to reduce greatly the commission costs and commission revenue associated with the handling of large-block institutional business. Faced with that impact, the critical question for judgment would be: How could the member firms and public traders be expected to respond to these changes in circumstance?

Any effort to judge the "public interest" effects of any commission rate change unavoidably involves this kind of question. If some other approach seems not to raise the question, it is only because the approach is imprecise enough so that the question is buried, undetected and unrecognized, somewhere in the decision-making process. Moreover, any effort to answer a question of this sort is, just as unavoidably, based to some extent on judgment and experience. Some judgments will be better than others, of course. Some judgments will be built up, for instance, from statistical studies of the effects of exchange rate changes in the past, in hopes that such past reactions can be used as a guide to the future; some will be based on the experience of those in a position to gauge customer reaction; and so on.

The virtue CRI can claim for the approach it has developed here is that the areas where the critical judgments will be needed can be isolated with greater facility and examined with greater clarity than in the past. The wisdom of the judgments themselves are another matter; these depend on how well customer and firm behavior can be estimated.

Let us assume, however, that the judgments are made and the problem is to explore the consequences. Such judgments would be framed in the form of so-called "decision rules". That is to say, they would take the form of statements such as the following: "If the commission rate on transactions under $500 rises by 100 percent, then individual traders will increase (or decrease) their trading in such blocks by 5 (or 10 or 15 or 'x') percent." If those alternatives did not seem to exhaust the plausible possibilities for the individual traders' behavior with respect to blocks under $500, then other "decision rules" could be tried for their effects. At the same time, one or more decision rules for each other important category would be formulated.

Whatever the decision rule may be, it is used in the DATA SYSTEM for the purpose of generating a new round of trading volume and commission revenue estimates. If there is no a priori basis for distinguishing among different decision rules for plausibility -- if all of them appear equally plausible or if informed people are in disagreement over their relative plausibility -- then all are tried as alternative possibilities. This process of working through different sets of predictions of behavior is available because of the efficiency of the DATA SYSTEM designed for the purpose. If the commission revenue outcomes prove insensitive to the different assumptions, then the problem diminishes in importance or

goes away; if the outcomes prove sensitive, then one is confronted with the stark and unavoidable question of choosing the most plausible decision rules. Out of this choice, new estimates are developed, which provide the basis for the next and final phase.

IV. The Final Phase - Measuring Public Interest Impact

Note where the analysis has carried us to this stage. (1) The first-round impacts of proposed commission rate changes have been identified; and (2) the best estimate of second-round effects have been made. A new equilibrium emerges. But in public interest terms, would the new equilibrium be better or worse than the old?

"Public interest" is whatever the policital process, broadly defined, decides that it should be. CRI assumed that, however defined, it would be related to the 11 "criteria" which are listed in Appendix A attached.

How can one go from the estimates generated by the procedures of Part III to the criteria listed in Appendix A? Here again, one is thrown back on the "decision rule" approach. That is to say, one has to find the areas where the "second-round" commission rate changes hit hardest; and one has to articulate how he thinks these changes will affect the various quantitative measures that are associated with the "public interest criteria". To lend substance to the approach, consider a set of such decision rules that were applied by CRI to a hypothetical commission rate change.

The hyoothetical exercise in this case was intended to measure the effect of a given proposed change in commission rates upon only two indicia of "public interest" selected for illustrative purposes: The number of firms providing safekeeping facilities; and the number of firms providing research facilities. The more or less arbitrary decision rules for predicting behavorial responses to "first-round" effects of the application of the alternativ rate schedule assumed:

1. Firms that experienced a decline greater than 25% in their AMEX and NYSE commission income as a result of the proposed change would go out of business.

2. Firms that experienced a loss between 5% and 25% in gross income:

   a. if their ASE commission income from institutional (non-individual) customers had been greater than 30%, would terminate any research and safekeeping in which they were currently engaged;

   b. if their ASE commission income from individuals had been greater than 70%, would retain any research and safekeeping activities in which they were currently engaged.

3. Firms that experienced a gain of less than 10% in income or a loss of less than 5%, would make no changes in their safekeeping and research activities.

4. Firms that experienced an increase of more than 10% would introduce research and safekeeping activities if they do not already provide these services.

Using our hypothetical commission rate schedule and our arbitrary decisions rules, and attaching them to existing data on firms' facilities and services, one was led to certain explicit conclusions; that 22 firms (all of them explicitly identifiable), would go out of business; that 57 firms, also identifiable, would add research services to the

facilities available to the public; and that 17 more would offer safe-keeping services.

With a different schedule and a different set of decision rules, of course, the results generated by the process could have been quite different. But repetition and experiment with the process could begin to provide a deeper understanding of the different variables to which members and customers portrayed by the data are especially sensitive.

In the end, of course, AMEX and the SEC would still have to face up to some hard "public interest" questions. On some indicia, a proposed rate change may appear to contribute to certain aspects of the "public interest" while, according to other indicia, it appears to have an opposite effect. When different elements of the public interest point in different directions, a problem of balance or weighting exists. Nothing in the CRI EXCHANGE DATA SYSTEM can solve that difficult problem. That is a problem that will have to be faced under any approach. But the CRI EXCHANGE DATA SYSTEM can help analysts estimate the impact of different rate structures on each of several specified aspects of the public interest. With data like these in hand, the policymakers should be in a better position to perceive the public policy implications of any rate structure they are interested in, and to pick out that one which gives a "package" of effects upon the public interest--item by item, and overall--that is preferable, in their judgment, to any other.

V. Next Steps

With the CRI EXCHANGE DATA SYSTEM operational, AMEX is in a greatly improved position for making reasonable, detailed judgments on the effects of any proposed commission rate change. There is a considerably more solid basis, for instance, for estimating such effects as: changes in revenue to member firms; changes in cost to the trading public; changes in member firm facilities and services; changes in the attractiveness of exchange markets relative to competing markets. Just how much light the system contributes to each of these points and others like them depends on how much the system is elaborated. Some points will always be intrinsically more difficult to explore than others; and judgment will continue to be required for all of them. But the continued use and improvement of the system cannot fail to enhance its utility and its credibility.

What is especially needed for increasing the utility of the approach is the following:

1. First and foremost, applying the analytical approach soon and often;

2. Second, extending the body of trading data that can be subjected to analysis, perhaps by updating the transactions data collected by AMEX in past periods from its members, perhaps by incorporating the parallel NYSE transactions data in the analytical system;

3. Third, extending the DATA SYSTEM itself so that a more efficient computerized link is forged between the transaction data on the one hand, and data describing the member firms and their facilities on the other. Especially important in the second category are data that describe the financial situtation of such firms.

If these steps are taken, it is not hard to envisage a process by which the capacity of the exchanges and SEC to monitor the exchanges' development will be greatly enlarged. The possibility for regular rather than sporadic reviews can be envisaged. And the possibility of moving the rate-making process from the field of armchair speculation into the area of objective analysis will be greatly enhanced.

Appendix A (Cont'd)

PUBLIC INTEREST CRITERIA AND THEIR RELATED MEASURES:

Criteria	Measures
ervation of a Central Auction Market.	1 a. Place to place price differences for individual securities at a point in time.
	1 b. Proportion of the trading in listed stocks that takes place at a single stock exchange.
	1 c. Absolute number of stocks and proportion of stocks that are listed on the central stock exchanges.
	1 d. Number of broker-dealers with access to and interest in the central stock exchanges, the geographic distribution of their offices and the size of their staffs.
rovement of Self-regulation	2 a. Number of instances of misconduct, manipulation, fraud and other abuses that occur and that are reported.
	2 b. Proportion of security transactions that are publicly reported.
	2 c. Regulatory programs of the central exchanges; disciplinary actions, complaints resolved, records maintained, training provided, personnel involved, expenditure.
	2 d. Regulatory programs of broker-dealers; disciplinary actions, complaints resolved, records maintained, training provided, personnel involved, level of expenditures.

Appendix A [illegible]

PUBLIC INTEREST CRITERIA AND THEIR RELATED MEASURES

Criteria	Measures
3. Maintenance of Public Pricing	3a. Number of buyers and sellers in the market.
	3b. Proportion of a stock outstanding in the hands of the few largest holders.
	3c. Speed, extent and accuracy with which price information is disseminated.
4. Maintenance of Incentives to Exchange Membership.	4a. Income opportunities associated with exchange membership.
5. Maintenance of the Quality of Central Markets.	5a. The average size and distribution of the price change (as a percent of price) in a security from one time period to the next.
	5b. The number of transactions in a security per period of time.
	5c. The length of time from placing an order until its execution.
6. Maintenance of Adequate Information and Related Services to Investors.	6a. The number of reports prepared, providing basic information, the consistency of reports on particular companies and the number of copies of each report made available.
	6b. Labor and other inputs devoted to research.
	6c. Number of registered representatives.

Appendix A (Cont'd)

PUBLIC INTEREST CRITERIA AND THEIR RELATED MEASURES

Criteria	Measures
7. Avoidance of Destructive Competition.	7a. Entry and exit rates of broker-dealers into the industry.
	7b. Number of broker-dealers offering services to each group of customers (small individual investors, large individual investors and institutions) and the degree of concentration among broker-dealers serving each group.
	7c. Differences among service offerings of broker-dealers serving each group of customers.
	7d. Change in cost with each additional unit of business in the short-run and in the long-run.
	7e. Cost of training and other expenditures associated with specializing resources for entry.
8. Maintenance of Opportunities for Smaller Brokerage Firms.	8a. Number of small firms in the industry and their geographic distribution.
	8b. Variety of services provided by small firms in the industry.
	8c. Cost and convenience of access to central markets by small firms.
	8d. Profitability of smaller brokerage firms.
	8e. Change in the population of smaller brokerage firms.

Appendix A (Cont'd)

PUBLIC INTEREST CRITERIA AND THEIR RELATED MEASURES

Criteria	Measures
9. Maintenance of Extra Capacity.	9a. Variation with market volume of customer access time to registered representatives.
	9b. Variation with market volume in the execution time of orders received by registered representatives.
	9c. Variation with market volume in the reporting of executed transactions.
	9d. Variation with volume of the number of operational failures.
10. Fair Treatment of Both Large and Small Investors.	10a. Quantity and quality of services offered large and small investors.
	10b. Commissions paid by large and small investors.
11. Establishment of Lowest Commission Charges Consistent with Other Public Interest Criteria.	11a. Member firm profits on all business.
	11b. Member firm profits on each type of business.

C
O
P
Y

April 2, 1970

Mr. Robert W. Haack, President
New York Stock Exchange
11 Wall Street
New York, New York 10005

Dear Mr. Haack:

In your letter of March 19, 1970 you submitted for our review pursuant to Securities Exchange Act Rule 17a-8, a proposed rule which would require member organizations to impose a surcharge in the form of a service fee of $15 or 50% of the applicable commission, whichever is the lesser, on orders of 1,000 shares or less. The Exchange states that this service charge is needed to give interim financial relief to the industry while the Commission considers the proposals for longer term revisions in the existing rate structure submitted by the Exchange on February 13, 1970.

In support of the proposed interim increase, the Exchange represents that a large number of its member organizations which do a public business sustained substantial losses in 1969 and that the situation has further deteriorated during the first quarter of 1970. Data obtained by the Commission confirms the loss experience of these firms. Past losses and the prospect of continued financial drain have influenced many member firms to impose limitations on their services to small investors. Based

on studies prepared by National Economic Research Associates, Inc. as supplemented by more recent samplings of member organizations, the Exchange estimates that a surcharge of $15 limited to 50% is required to provide adequate brokerage services for small investors and to retain needed capital within the securities business.

The Commission is aware of the contribution of small investors to the depth and liquidity of our trading markets and considers it to be vital to the public interest that such investors continue to be able to participate directly in equity investment. We are also concerned with the financial problems of the industry and the losses sustained in the past year and during the first quarter of 1970. Accordingly, we will not object to the Exchange imposing an interim surcharge on rates to provide emergency financial relief while more fundamental alterations of the existing rate structure can be considered. However, we believe such action can be viewed as justifiable only if the service fee is to be imposed for a 90 day period only and will expire thereafter. This self-liquidating factor would assure that the increase will, in fact, be an interim measure. Its continuance for more than one quarter will require a review of the economic conditions, including transactions volume levels, existing at that future time.

The Commission expressly predicates its non-objection to the interim increase in charges upon its expectations that the Exchange will take all steps necessary to assure that full brokerage services for small investors are restored and that transactions size and other limitations on such accounts imposed in the last year by the Exchange's membership will be removed. We also expect that the Exchange will undertake to make certain that the additional revenue produced by the interim surcharge will be received by the member firms obtaining the customer's order and will be prudently employed by its member organizations to improve their operations and financial position.

Lastly, we wish to emphasize that the Commission's action is based on our understanding that immediate financial relief is required. Our study of the existing commission rate structure will continue and we shall also monitor the operations of the interim fee arrangement. A full examination of the proposals for longer term revisions in the rate structure will be made as expeditiously as possible. In this regard, the Commission expects that the Exchange will promptly comply with our request to make available all underlying data and materials required for such review.

Sincerely,

/s/ Hamer H. Budge

Dictated over the telephone by
Sheldon Rappaport, SEC - 4/2/70.

April 2, 1970

Mr. Irving M. Pollack, Director
Division of Trading and Markets
Securities and Exchange Commission
Washington, D. C. 20549

Dear Mr. Pollack:

Enclosed for filing pursuant to Exchange Act Rule 17a-8 are three copies of new Rule 396 adopted by the Board today, requiring member firms to impose a service charge on all transactions executed on the Exchange for non-members or allied members. This charge is to equal $15 for each order but in no instance to exceed 50% of the present non-member commission.

On March 26, 1970, the Exchange submitted a statement supporting the need for an increase in financial revenue for its member organizations. The Exchange wishes to make this rule effective on April 6, 1970 if the Commission accelerates the filing period required by Rule 17a-8.

The Exchange understands that if Commission approval is granted, it is conditioned upon Exchange acceptance of the conditions outlined in the letter of April 2, 1970 from Chairman Budge to Mr. Robert Haack, President of the New York Stock Exchange and as discussed with the Commission's staff.

If you have any questions, please call me.

Sincerely,

/S/ RALPH S. SAUL

enclosures (3)
Dictated over telephone to
Mr. Sheldon Rappaport 4/3/70.

RSS:rd

Rule 396 -- Service Charge

In addition to the commission computed in accordance with th provisions of paragraph (a) (1) of Section 2, Article VI, of the Constitution each member or member organization shall charge and collect upon the execution on the Floor of the Exchange of any order for the purchase or sale for the account of a non-member or an allied member of 1,000 shares or less, a service charge equal to not less than the lesser of $15 or 50% of such commission. For the purposes of this Rule, an order shall be deeme to include all purchases or sales for one account of round lots or odd lots or both of a single security, on the same day, pursuant to a single order.

DIVISION OF TRADING AND MARKETS

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

April 10, 1970

Mr. Ralph S. Saul, President
American Stock Exchange
86 Trinity Place
New York, New York 10006

Dear Mr. Saul:

This is to advise that the Commission does not object to adoption by your Exchange of Rule 396 imposing on customers' orders in one stock on one day of up to 1,000 shares, including odd-lots which may be part of the order, a service charge amounting to the lesser of $15 or 50% of the minimum commission whichever is less. The Commission's non-objection and acceleration of the 21-day period provided in Exchange Act Rule 17a-8 is conditioned on the understanding that no member firm which traditionally has accepted small customer accounts will impose or continue any limitation on the size of a customer's order or account and that on orders of 1,000 shares or less no customer will be charged fees in excess of the minimum commission plus a service charge of the lesser of $15 or 50% of the minimum commission. A further condition is that any member firm which has charged customers more th[illegible] amounts since the initial operative date of your rule will [illegible] such excess to its customers.

The Commission's non-objection also is conditioned on the understanding that the firm obtaining the customer's order (the "forwarder") is entitled to receive the entire service charge but that it may share the service charge with the member firm which executes and clears orders for it either on an omnibus account basis or on a fully introduced account basis; and that in no event shall the clearing or carrying firm obtain a proportionate share of the service charge exceeding the percentage of commissions obtained by such firm pursuant to arrangements with the forwarder which existed prior to the adoption of this rule.

Sincerely,

Irving M. Pollack
Director

938-2401

June 29, 1970

Mr. Irving M. Pollack, Director
Division of Trading and Markets
Securities and Exchange Commission
Washington, D. C. 20549

Dear Mr. Pollack:

I am writing with regard to your April 10, 1970 letter responding to the submission by the Exchange under Rule 17a-8 of Exchange Rule 396 authorizing the imposition of a surcharge. Your letter set forth conditions under which the Commission would have no objection to adoption of the rule.

A letter of the same date was sent to each of the national securities exchanges indicating "that, subject to certain conditions, the Commission has no objection to and accepts acceleration of your rule proposal imposing a surcharge for a period not to exceed 90 days on the minimum commission rates for exchange transactions." This period expires on July 5, 1970.

The Board of Governors of the Exchange considered the matter of extending the surcharge at its meeting on June 25, 1970 and concluded that the conditions outlined in the Exchange's statement to the Commission, dated March 26, 1970, concerning the urgent need for an increase in financial revenue for member organizations still pertained. Thus, the Board determined to continue the application of Rule 396 of this Exchange. The Exchange will continue to observe the conditions outlined in the letter of April 2, 1970 from Chairman Budge to Mr. Robert W. Haack, President of the New York Stock Exchange.

Since our letter of March 26, 1970 to Chairman Budge, economic conditions among member firms have steadily deteriorated. The need for continued application of Rule 396 is urgent.

Sincerely,

/S/ RALPH S. SAUL

RSS:rd
bcc: Messrs. Kolton, Walker, Watson, Birnbaum, Nash, Cheney.

AMERICAN STOCK EXCHANGE

July 16, 1970

The Honorable Hamer H. Budge
Chairman
Securities and Exchange Commission
500 North Capitol Street
Washington, D. C. 20549

Dear Chairman Budge:

We are writing regarding SEC Release 8923 which announced that the commission rate hearings are being reconvened to receive submissions pertinent to the question of whether it is necessary or appropriate in the public interest, and to insure public investors adequate access to the securities market, to extend the surcharge initiated in April. We wish to respond to the Commission's invitation to submit the Exchange's views on this question.

The Amex recognizes that the service charge is only a temporary measure to enable the membership--particularly those who must serve the public--to gain a measure of urgently needed income until a decision can be made with respect to a new minimum commission rate schedule which will best serve the public interest. Indeed, with markedly lower volume since April, the revenue effects of the service charge have been so widely disappointing that an increase in the service charge could be looked upon as a step necessary to assure public access to the exchange markets. Recent Exchange research bears this out.

On March 26, 1970 the Exchange submitted material, summarized below, which the Board of Governors considered important in determining the necessity for imposing a surcharge at that time. The Exchange requested that the submission be included in the record of the commission rate hearings and believes this material should be reconsidered now in reaching a decision on continuing the surcharge.

In our submission in March we provided the Commission with the results of a survey in which the first twelve ranking member firms in volume of public business done on the American Stock Exchange were interviewed. The information which we assembled included a description of the size and nature of the business of the firms, the changes in the mix and in the emphasis of their business, their general profit and loss situations in 1969, and increases in costs and the steps taken by certain firms to discourage small ticket business.

A new survey, commenced on June 22, 1970 and recently completed, covered several additional areas as well. We sought information as to the specific results of cost reduction programs, the continued ability of the firms to provide service to small investors after cost reduction programs, the consequences of any further cost reductions as regards the firms' ability to service customers, and what alternatives are open to these member organizations if the service charge were to be discontinued.

In general, the survey revealed that the overwhelming majority of these organizations continue to suffer substantial losses even with the additional income provided by the service charge, and that many of these firms might be forced into liquidation if the rate of loss which they have been experiencing during 1970 continues for more than a few months. In addition, we were advised by most of these organizations that they have reduced their costs to the point where any further reductions would make it imperative that they discontinue servicing the vast majority of their individual customers.

We are attaching a descriptive table setting forth the most pertinent results of this new survey. We might point out that among the more important findings were:

- Nine of the twelve firms surveyed are in a loss position through the first five months of 1970. Further, two other firms would be in a loss position were it not for the additional income provided by the surcharge.

- Eight of the firms interviewed stated they could be forced to liquidate their public business within the next twelve months at their present rate of loss, even with the surcharge.

- These same eight firms stated that the discontinuance of the surcharge could very much hasten the necessity to liquidate their public business under present market conditions. Further, three other firms stated that the elimination of the surcharge could have the effect of forcing them to liquidate their public business, whereas such necessity is highly improbable if the surcharge remains.

- Six of the twelve firms lost money during each of the first five months of 1970. A seventh firm suffered losses in four of the first five months of this year, and in the fifth month its profit was less than $10,000 and attributable to income from two large underwritings.

- With only one exception, the service charge accounted for in excess of 20% of the retail commission income of each of the firms since it has been in effect.

- Strenuous efforts to cut costs are indicated by the fact that six of the firms reported that cost reduction measures which have been taken will ultimately reduce their expenses by as much as 20%.

- Eight of the firms have advised that any further cost reductions would endanger their capabilities to provide adequate service to customers.

Our interviews also revealed that the number of accounts carried by the firms has not appreciably been reduced in the past year. This means that even if a large number of these accounts are inactive, substantial expenses are still required to maintain these accounts. These expenses include such items as mailing periodic statements, collecting dividends and interest, notifying customers of important developments regarding their holdings, and transmitting proxies. Further, the cost of capital necessary to comply with the Exchange capital rules is a continuing expense. Any plan to reduce the number of accounts is not just a matter of closing out some of the smaller accounts.

Under current conditions it is difficult for some major member firms to effect further reductions of expenses of maintaining customer accounts without incurring certain risks to the firm affecting its ability to continue in business. Once a firm determines that it will no longer offer its services to some of its public customers, these and other customers hearing of it may fear that a full-scale liquidation is in process which could affect their accounts. This could begin a chain reaction wherein customers would commence demanding transfer of accounts or liquidation of their positions in the market. Employees of such a firm may fear that they are about to become unemployed and will seek employment elsewhere. All of these possibilities must be taken into account when a firm begins a major expense cutting program accompanied by a large scale closing of accounts.

In view of the foregoing, the only realistic alternative to going out of business which faces many of these houses is to alter the structure of their organizations so as to depend no longer on or service retail business. Rather they intend to concentrate on such areas as managed accounts, servicing of institutional customers, investment banking and corporate finance. One other alternative being discussed is to continue to service individual accounts, but to take formidable steps to discourage small ticket business. You will recall that a number of firms had already taken some steps in this direction before the adoption of the service charge.

With the renewal of the service charge, the large predominantly retail houses should hopefully be able to continue to offer and provide service to the general investing public, thus keeping open the routes of access to the securities market for individual investors. Without the service charge, it is strikingly clear that a number of firms now offering a broad range of services will be placed in immediate financial jeopardy, and will move promptly to either change the nature of their business, or withdraw from the field entirely.

The public likely regards the service charge as solely an increase in the cost of buying and selling stocks. However, the commission revenue covers far more than the costs on each particular transaction. A large part of this money is needed to support the regulatory systems and the technology necessary to enable the brokerage community to furnish the range of services required by customers. This,

of course, is difficult for the public customer to appreciate since it is not visible to him, and his immediate interests lie almost exclusively in the securities which are the subject of his transactions.

In summary, therefore, we urge the Commission to continue the interim service charge. As stated previously, we believe this charge is vital to permitting firms to continue to service individual accounts until such time as a new minimum rate schedule is adopted, and without it, a traumatic and unwelcome change will occur in the nation's securities industry.

We are attaching herewith summaries of the pertinent results of our most recent survey.

Sincerely yours,

/s/ James W. Walker, Jr.

Attachments

SOME ASPECTS OF IMPACT OF SURCHARGE ON SELECTED MEMBER FIRMS

(Based on Survey of First Twelve Ranking Member Firms in Volume of Public Business Done on ASE)

FIRM	% OF 1969 VOLUME ON ASE	NUMBER OF BRANCH OFFICES	APPROXIMATE NUMBER OF REGISTERED REPRESENTATIVES
A	1.11	68	800
B	2.01	59	650
C	1.98	64	720
D	2.49	101	1,500
E	1.77	94	1,100
F	4.14	127	1,600
G	1.79	57	980
H	1.78	69	1,200
I	2.74	95	1,500
J	2.99	99	1,450
K	2.59	83	1,300
L	7.87	183	3,800

FIRM	NUMBER OF MONTHS IN WHICH LOSS SUFFERED FROM 1/1/70 - 5/31/70	PROFIT OR LOSS POSITION FOR FIRST 5 MONTHS OF 1970	APPROXIMATE % OF RETAIL COMMISSION INCOME DUE TO SURCHARGE	APPROXIMATE REDUCTIC IN EMPLOYEES FROM 7/1/69 - 5/31/70
A	2	Profit	24%	50
B	5	Loss	23%	900
C	1	Loss	18%	50
D	5	Loss	24%	400
E	5	Loss	23%	600
F	5	Loss	24%	1000
G	0	Profit	22%	50
H	2	Loss	24%	350
I	5	Loss	24%	700
J	5	Loss	24%	300
K	4	Loss	22%	450
L	0	Profit	21%	400

FIRM	PROJECTED ESTIMATE OF % OF EXPENSE REDUCTION SINCE 1/70	MARGIN FOR FURTHER COST REDUCTION WITHOUT ENDANGERING SERVICE CAPABILITY	PROSPECT OF OBTAINING NEW CAPITAL UNDER PRESENT CONDITIONS	FIRM WILL BE FORCED T DISCOURAGE SMALL-TICKET BUSINESS IF SURCHARGE DISCONTIN
A	10%	Limited	Nil	Yes
B	20%	None	Nil	Yes
C	5%	Limited	Nil	Yes
D	15%	None	Nil	Yes
E	20%	None	Nil	Yes
F	20%	None	Nil	Yes
G	10%	Limited	Limited	Yes
H	20%	None	Nil	Yes
I	20%	None	Nil	Yes
J	20%	None	Nil	Yes
K	15%	None	Nil	Yes
L	5%	Substantial	Fair	Unlikely

FIRM	FIRM WILL CHANGE MIX AND EMPHASIS OF BUSINESS IF SURCHARGE IS DISCONTINUED	FIRM MAY BE REQUIRED TO REDUCE SERVICE CAPABILITY IF SURCHARGE IS DISCONTINUED	ELIMINATION OF SURCHARGE COULD CAUSE OR HASTEN NECESSITY TO LIQUIDATE PUBLIC BUSINESS
A	Yes	Yes	Yes
B	Yes	Yes	Yes
C	Yes	Yes	Yes
D	Yes	Yes	Yes
E	Yes	Yes	Yes
F	Yes	Yes	Yes
G	Yes	Yes	Yes
H	Yes	Yes	Yes
I	Yes	Yes	Yes
J	Yes	Yes	Yes
K	Yes	Yes	Yes
L	Possibly	No	No

Exhibit N

For Release Thursday, July 2, 1970

Securities and Exchange Commission
Washington, D. C. 20549

Securities Exchange Act
Release #8924

The Securities and Exchange Commission today announced that its commission rate structure hearing will reconvene at 10:00 a.m., July 20, 1970, at the Commission's headquarters 500 North Capitol Street, Washington, D. C. 20549, to receive testimony and other relevant data concerning the proposed new minimum commission rates of the New York Stock Exchange, which have been published in Exchange Act Release #8920, and other proposals which have been or may be presented. The Commission has requested representatives of the New York Stock Exchange to appear at that time to present such testimony and relevant data. The Commission invites the other Exchanges and other interested persons to submit their views and requests in persons who may wish to present testimony or data to file appropriate summaries of their proposed presentation with the Secretary of the Commission.

Exhibit O

C
O
P
Y

AMERICAN STOCK EXCHANGE

July 16, 1970

The Honorable Hamer H. Budge
Chairman
Securities and Exchange Commission
Washington, D.C. 20549

Dear Chairman Budge:

I am responding to your suggestion at our meeting of July 1 with the Commission that we outline our views as to the importance of the commission rate-making process, and the relationship of that process to the functioning of exchange markets and the regulation of securities markets. We believe that the sources of income derived by brokers and dealers functioning in the nation's securities markets are a vital part of the markets themselves and must be considered in that context in attempting to resolve the various problems relating to the minimum commission rate schedules of national securities exchanges. So far in the pending hearings little attention appears to have been focused on this important aspect of commission rates.

The Income of "Market Professionals" is Governed by
the Relationship of the Parties in Securities Transactions

The form of compensation or income that a broker or dealer receives as a result of acting in a securities transaction depends upon the nature of the relationship between the parties to the transaction. If a broker acts as an agent for his customer, he receives a commission; when he acts as a dealer in a principal transaction, he derives his income from the difference between the purchase and sales price of a security, or the "spread". This is true whether the customer is a member of the public or another broker-dealer.

The Securities Exchange Act defines brokers and dealers--the "market professionals"--as a class apart from the public, and provides for pervasive regulation of their activities in the securities markets. They act as the intermediaries between members of the investing public, and between issuers and the public, in effecting transactions in the regulated securities markets.

"Market Professionals" Participate In Various Market Systems

"Market professionals" normally function in a number of different market systems. These systems include the exchange markets, the new issue market, the registered secondary market, the distribution of investment company shares, and the over-the-counter market, which is largely a dealer market. Within the limits of financial ability and professional qualifications, brokers and dealers may function in both capacities in any or all market systems.

Income of "Market Professionals" is Regulated in All Market Systems

The amount of income the "market professional" receives in a securities transaction is subject to some regulation in all market systems. In the over-the-counter market, standards apply to the maximum "spreads" of dealers and to the amount of commissions charged by brokers in connection with transactions which are subject to the Rules of Fair Practice of the NASD. Thus, the markup policy of the NASD limits the amount of income which a "market professional" may derive from a transaction in most market systems, except the exchange markets. In general, the NASD markup policy permits "spreads" in dealer transactions, or commissions in agency transactions, of up to 5% of the value of a transaction, an amount which considerably exceeds the average commission on an exchange transaction. Dealer "spreads" in the distribution of investment company shares are regulated under Section 22 of the Investment Company Act of 1940.

In the exchange markets, minimums apply to the commissions charged and are enforced by the regulatory authority of the exchanges. These minimums for many years have averaged slightly over 1% of the dollar value of the transaction.

These legal and regulatory patterns mean first, that a broker-dealer's income is derived either through his commissions, or his "spreads"; second, a broker-dealer may, and often does, function as such in all securities markets; and, third, the sources of his income as a broker-dealer in different markets are regulated to varying extents, and his income as a percent of the value of a securities transaction is potentially much greater in markets other than exchange markets.

Distinction of Market Systems in Terms of "Market Professionals" Income

In the absence of market organization for a contrary purpose, a dealer could be expected to participate directly in all transactions involving the public. The opportunity for customers to meet through their agents to effect a transaction would rarely occur. Organizing a market system to promote the frequency by which customers meet through their agents produces an exchange or agency-structured market system. The effect, of course, is to subordinate the role of the "professional" dealing for himself in such a market system.

As we view the broad policy objectives and actions of the SEC over the years, it appears that the Commission has, in the public interest, favored the subordination of "professionals" dealing for their own account in favor of an agency system of markets. Therefore, in the context of the present commission rate hearings, any steps taken by the Commission that would weaken an agency-structured market system would seem inconsistent with the policy pursued by the SEC for nearly 40 years.

"Market Professional" Income is Integral Part of Agency-Structured Market System

In arriving at reasonable commission rates for an exchange market, it is necessary that rates be set at levels which will bind the "market professional" to an agency-structured system, and induce him to forego the profit potential that may be derived from acting as a dealer in another market system. Equally, the system must be sufficiently efficient to provide reasonable assurance that fixed minimum commission rates will, in the long run, be financially rewarding. Finally, the rate must be such that the cost to the customer of the total transaction will not exceed what he would pay in effecting his transaction in another system.

Therefore, uniform commission rates in exchange markets which become "unreasonable" become economically unsound as well. The "market professional" who functions in most cases as a dealer in other market systems, and who is also a member of and responsible for the exchange system, must be able to respond to a commission rate structure which, among other things, assures the survival of the system. Indeed, exchange governors have as their primary duty the "promotion of the welfare, purposes and objects of the Exchange" which is further defined "to provide a securities marketplace where high standards of honor and integrity shall prevail and to promote and maintain just

and equitable principles of trade and business".

In this context, commission rates which become too high permit dealer competition to arise away from the exchange system. Such commission rates, therefore, cause a loss of business and a weakening of the system through the fracturing of the market. In the final analysis, they would be "excessive" to the customer who would take his business elsewhere. On the other hand, a rate which is too low destroys the "market professionals" incentive for membership because of the unattractive income potential.

Commission rates are developed by the governors of an exchange who are aware of these opposing forces and of their own responsibilities. They must develop rates to meet the needs of an exchange market that is only one of a number of market systems. In developing these rates, they have available not only cost figures and other data, but also broad knowledge and experience in other market systems. In our view, it is therefore more important to examine in detail--and be satisfied with--the process by which rates are developed, than it is to adopt some formula related to costs or volume.

To the extent that those involved in the development of rates are competitors in various market systems, sharply different views must be reconciled in the process of developing commission rates for an exchange. Moreover, the process that is followed, the facts that are developed to support commission rates, and the judgments that are finally made are subject to SEC oversight. This provides an independent judgment, in the public interest, of the fairness of the rates and of the process by which they have been developed.

Conclusions

From the foregoing analysis, two broad observations can be made: one concerns the SEC interest in the agency-structured market system; and the second concerns the method that may be employed to improve rate making in the context of regulating securities markets.

If one accepts all, or even part, of the reasoning outlined above, it follows that the SEC has a vital interest in assuring that a securities market system which

- permits public buyers and sellers to meet through their agents in a central marketplace to the greatest extent possible;

- encourages an agency market where transactions are effected at or between the quoted bid and asked price rather than outside the published bid and asked price as in most dealer markets;

- subordinates the role of the "professional" dealing for his own account in the market to that of the customer represented by his agent and thus tends to reduce the potential for conflicts of interest by the parties to a transaction;

- provides uniform, non-discriminating rates for users of the markets;

- avoids the concentration and the need for excessive amounts of capital inherent in a dealer-structured market;

- provides for disclosure to the public of the price, volume and time of the transaction,

which, in short, incorporates characteristics to serve best the vast majority of public investors should not, in the public interest, be permitted to atrophy or be discarded unless it can be clearly established that a better market structure, meeting these and similar tests of market quality, has been developed.

We believe that consideration of the exchange market system as an agency-structured market and of the public benefits inherent in such a market system was given by the Congress when it enacted the Securities Exchange Act of 1934, and when it accepted the principles of self-regulation and the commission rate-making process bound up with the functioning of exchange markets. Indeed, it is difficult to rationalize the action of the Congress at that time in any other way.

As to what may be done to improve the rate-making process, we outlined a suggested detailed procedure in our March 26, 1970 submission to the Commission. This procedure included the possibility of requiring a national securities exchange, prior to imposing a minimum commission rate schedule, to file with the Commission a plan disclosing the process by which such rates are to be determined, the frequency with which rates are to be reviewed, and the method of regulating those rates to assure uniformity of interpretation and

enforcement. Suc h a procedure would permit the Commission to take a prope flexible approach to this important aspect of market regulation, to see that appropriate changes in rate schedules are effected when the need is demonstrated, and to require that exchanges be responsive to changing conditions and to constructive suggestions of interested parties.

In this connection, we urge the Commission to consider the various steps taken by the New York Stock Exchange in developing its new commission rate schedule submitted on June 30, 1970. We believe that the procedures recently followed by the New York Stock Exchange, although not formalized by rule, closely parallel many of the features which we have proposed for improving the rate-making process.

While the American Stock Exchange did not participate in the development of that rate schedule, we believe a careful analysis of the procedures followed will demonstrate the extent to which efforts were made to arrive at fair levels of commissions, while at the same time giving appropriate attention to the public interest objectives of the central agency market. We therefore strongly urge the Commission to give favorable consideration to the new rate schedule submitted by the New York Stock Exchange so that it can be implemented at the earliest possible time. At the same time, changes in the rate-making process may be worked out to bring the commission rate hearings to a conclusion.

Because of time considerations and the urgency of dealing with the overall commission rate problem as soon as possible, I am submitting this outline and our suggestions informally in the hope that it may be helpful in resolving present commission rate problems, and in charting a course for dealing with these problems in the future.

Sincerely,

s/ James W. Walker, Jr.

cc: The Honorable Hugh F. Owens
The Honorable A. Sydney Herlong, Jr.
The Honorable Richard B. Smith
The Honorable James J. Needham

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF TRADING AND MARKETS

Exhibit P

March 17, 1971

Mr. Ralph S. Saul, President
American Stock Exchange
86 Trinity Place
New York, New York 10006

Mr. James E. Dowd, President
Boston Stock Exchange
53 State Street
Boston, Massachusetts 02109

Mr. A. W. Ault, President
Cincinnati Stock Exchange
209 Dixie Terminal Building
Cincinnati, Ohio 45202

Mr. Peter M. McPherson, President
Detroit Stock Exchange
2314 Penobscot Building
Detroit, Michigan 48226

Mr. Michael E. Tobin, President
Midwest Stock Exchange
120 South La Salle Street
Chicago, Illinois 60603

Mr. Edward T. McCormick, President
National Stock Exchange
91 Hudson Street
New York, New York 10013

Mr. Thomas P. Phelan, President
Pacific Coast Stock Exchange
301 Pine Street
San Francisco, California 94104

Mr. Elkins Wetherill, President
Philadelphia-Baltimore-Washington Stock Exchange
17th Street and Stock Exchange Place
Philadelphia, Pennsylvania 19103

xhibit P

Mr. George J. Potter, President
Salt Lake Stock Exchange
39 Exchange Place
Salt Lake City, Utah 84011

Mr. G. C. George, President
Spokane Stock Exchange
206 Radio Central Building
Spokane, Washington 99204

Gentlemen:

This letter, separately addressed to each of the registered national securities exchanges other than the New York Stock Exchange, relates to the Commission's advice to the New York Stock Exchange that minimum non-member and intra-member commission rates on large, institutional size orders are neither necessary nor appropriate. Copies of the Commission's letters to the New York Stock Exchange on this subject (Exchange Act Release Nos. 9007, 9079, 9096 and 9105) are enclosed for appropriate consideration by your Exchange.

We, of course, will expedite consideration of any filings on this subject which your exchange may make pursuant to Rule 17a-8 so that they may become effective on or before April 5, 1971.

Sincerely,

Irving M. Pollack
Director

Enclosures

OFFICE OF THE CHAIRMAN

155 SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

October 22, 1970

Mr. Robert W. Haack
President
New York Stock Exchange
Eleven Wall Street
New York, New York 10005

Dear Mr. Haack:

The Commission has reviewed the proposed New York Stock Exchange minimum commission rate schedule which it received June 30, 1970, and the evidence presented in the public hearings on that subject. As a result of its review, the Commission has concluded that the following segments of the schedule are not reasonable:

(1) Commissions to be charged for orders of 100-400 shares.

The Commission believes that the schedule proposed for orders of 100-400 shares is unreasonable in terms of the percentage increase it represents over the present minimum commission rate schedule and the rate of commissions charged more recently with the imposition of the interim service charge in addition to the present schedule. Investors purchasing this number of shares would be required, under the proposal, to bear an inordinate amount of total commission increase sought by the Exchange. The Commission has determined that increases in these particular minimum commission rates would not be unreasonable if they were reduced in the 100 through 400 share order categories at the $40 per share price level, as shown in the schedule below, with proportionate reductions for other price levels in these share order categories.

Number of Shares	Proposed Increase of	Reduced To
100	50%	37%
200	45%	34%
300	35%	26%
400	25%	20%

(2) Commissions to be charged for portion of orders exceeding $100,000 or more.

The Commission is of the opinion that fixed charges for portions of orders in excess of $100,000 are neither necessary nor appropriate.

The Commission believes that the remainder of the proposed schedule is not unreasonable and that the schedule, if adopted as modified as suggested in (1) and (2) above, will afford member firms an income consistent with their interests and the interests of investors and the public at large. The Commission's action is in part predicated upon the need for member firms to adequately service the small investor and, accordingly, is conditioned on the understanding that no member firm which traditionally has accepted small customer accounts will impose or continue any limitation on the size of such customer's order or account and that in connection with such business the firm will not charge fees in excess of the proposed rates. The Commission also expects that the Exchange will take all steps necessary to assure that these revenues will be prudently employed by all of its member organizations to improve their operations and financial position.

Consistent with the representations made by the Exchange of the need for continuous review of commission charges, the Commission will re-examine the level and structure of rates for the period following July 31, 1971. For this purpose, the Commission requests the Exchange as soon as possible but no later than June 30, 1971, to present for Commission consideration a new rate schedule of scaled percentage charges based upon the amount involved in an order. Such a rate schedule should be fair, readily understandable and not present undue problems of administration.

The Exchange also is requested on or before that date to present a plan for reasonable economic access to the New York Stock Exchange for non-member broker-dealers. Further, the Exchange is requested on or before June 30, 1971, to submit appropriate revisions relating to intra-member rates.

Finally, the Commission considers it to be necessary to the continuance of a system of fixed rates for exchange transactions that a uniform system of accounts as well as uniform and adequate methods of cost allocations be implemented. Accordingly, the Exchange should present at the earliest practicable date and not later than May 31, 1971 a plan for such uniform accounting system. At the same time, the Commission will be considering such a plan for all registered broker-dealers.

If the Commission or its staff can be of assistance to the Exchange in regard to our suggested modifications of its proposed schedule, please let us know.

Sincerely,

Hamer H. Budge
Chairman

RELEASE Thursday, February 11, 1971

Securities and Exchange Commission
Washington, D. C. 20549

Securities Exchange Act of 1934
Release No. 9079

The Securities and Exchange Commission today announced that it has concluded that the New York Stock Exchange should take immediate action to implement by April 1, 1971 the Commission's finding that fixed minimum commissions on large institutional size orders are neither necessary nor appropriate. (That finding was contained in a Commission letter of October 22, 1970 to the New York Stock Exchange which was published as Securities Exchange Act Release No. 9007.) The Commission also concluded that, in light of substantial changes in trading patterns on the New York Stock Exchange and to gain further experience with competitive rates, it would not object if that Exchange provided for competitive rates on portions of orders above a level higher than the $100,000 figure mentioned in its October 22, 1970 letter but that the point at which competitive rates are to commence should not exceed $500,000. The Commission also made clear that it saw no reason for delay by the New York Stock Exchange in initiating competitive rates on such orders until that Exchange determines whether and how its rules regarding institutional membership should be amended.

The Commission's letter of February 10, 1971 to the Exchange in response to a February 3, 1971 letter from the Exchange follows:

February 10, 1971

Mr. Robert W. Haack
President
New York Stock Exchange
Eleven Wall Street
New York, New York 10005

Dear Mr. Haack:

As your February 3, 1971 letter indicates, in early January the Commission advised representatives of the Exchange that delay in implementation of the elimination of minimum commission rates on large orders for the purpose of enabling the Exchange to undertake a study of whether such action should be taken was unacceptable.

You have described in some detail concurrent and subsequent activities of the Exchange's Committee on Membership Qualifications concerning institutional membership. We see no reason why the Costs and Revenues Committee's or the Board's resolution of the competitive rate issue "must logically await the development of definitive recommendations" respecting institutional membership. As you know, we did not suggest in our October 22, 1970 letter, nor do we now suggest that Exchange action on the implementation of competitive rates for institutional size orders should await resolution of various issues referred to in the Commission's October 22 letter or of questions concerning Exchange Rule 318.

Accordingly, particularly in view of the time that has elapsed since the Commission's letter of October 22, the Commission believes the Exchange should take immediate action to implement, by April 1, 1971, the Commission's finding that fixed minimum commissions on institutional size orders are neither necessary nor appropriate. In light of substantial changes in trading patterns on the New York Stock Exchange and to gain further experience with competitive rates, the Commission will not object to the Exchange's commencing competitive rates on portions of orders above a level not higher than $500,000 rather than at the $100,000 figure mentioned in our October 22 letter.

Sincerely,

Richard B. Smith
Commissioner

February 3, 1971

The Honorable Hugh F. Owens
Commissioner
Securities and Exchange Commission
500 North Capitol Street, N. W.
Washington, D. C. 20549

Dear Commissioner Owens:

In accordance with your request, the purpose of this letter is to bring the Commission up to date on developments with respect to changes in NYSE commission rates since our letter of December 23, 1970.

In our letter of December 23, we responded to the Commission's comments of October 22 on the Exchange's minimum commission schedule which we submitted to the Commission on June 30, 1970. Our response included a proposed new interim service charge, contained in a revision to Exchange Rule 383, which the Board of Governors had approved, in principle, on December 23 for discussion with the Commission.

In our December 23 letter, we also responded to the other comments made in the Commission's October 22 letter by stating:

> "The Commission's October 22 letter also suggests that fixed minimum charges for portions of orders in excess of $100,000 are neither necessary nor appropriate. It is our understanding that the Commission was not suggesting that fixed rates on portions of orders above $100,000 be eliminated immediately but rather that it expects the Exchange to comment on the Commission's suggestion within a reasonable period of time. We, therefore, propose to undertake, with the cooperation of the Commission, a study of a proposal that

a uniform level of fixed rates be made a part of the Exchange's minimum commission rate schedule.

"Similarly, the Costs and Revenues Committee will begin a review of the other issues raised in the Commission's letter in order that the Exchange may respond to the questions of access for non-member broker-dealers, intra-member rates and a uniform system of accounts and cost allocations by the dates set out in the Commission's letter of October 22."

In early January, representatives of the Exchange had a number of discussions both with the Commission and its staff which led us to conclude that the SEC favored a delay in commenting on the proposed interim service charge until additional public hearings could be held. Further, it was indicated that the Commission staff might view an extension of the modified service charge -- which would have applied to all orders -- akin to a commission rate change, and, accordingly, could be implemented only by amending the Exchange Constitution and submitting the proposal to the membership for balloting.

More important, however, the Commission indicated that the suggestion in our December 23 letter, as quoted above, that a study be undertaken of the elimination of fixed minimum commission rates on large transactions was not acceptable.

As a result, it appeared to us that further consideration of these issues by the Exchange's Costs and Revenues Committee was required.

While these discussions were in progress in early January, the Exchange's Committee on Membership Qualifications was also working intensively to develop recommendations concerning institutional membership on the Exchange. On January 25, the Committee agreed, in principle, "that under appropriate conditions subject to self-regulatory practices, institutional membership is desirable on the New York Stock Exchange when coupled with competitive commission rates on trades at some amount to be determined." The Committee directed the staff of the Exchange to recommend a specific course of action to implement this decision. A Subcommittee on Rules was created to provide the staff with policy guidance and to consider staff reports.

Since January 25, the Subcommittee has held several meetings and a staff task force has been working diligently to carry out the directions of the Committee on Membership Qualifications.

Under the Exchange's procedures, recommendations concerning competitive rates must be considered by the Costs and Revenues Committee. It seems that a resolution of the competitive rate issue must logically await the development of definitive recommendations by the Committee on Membership Qualifications.

It is the present intention of the Subcommittee on Rules to develop specific proposals relating to institutional membership for submission to the full Committee on Membership Qualifications at the earliest possible date. Any action by the full Committee must then

be submitted to the Exchange's Board of Governors for their considera- tion. The earliest date specific proposals with respect to institutional membership could be considered by the Board of Governors is February 18, the next policy meeting of the Board.

Progress clearly depends upon the speed with which the Subcommittee and staff can complete their work and gain approval of the full Committee.

It may be that proposals with respect to competitive rates could be considered by the Board of Governors at the same time the issue of institutional membership is brought before the Board. In fact, some members feel that competitive rates on some trades should be an integral part of any institutional membership proposals and the two issues must be considered and resolved at the same time.

As I am sure the Commission appreciates, these are terribly complicated issues, there is little data on the impact, and both issues are highly controversial within the securities industry. Nonetheless, we are proceeding as rapidly as possible, as I think this recitation of recent developments demonstrates. We will keep the Commission advised of our progress. In the meantime, if the Commission has any suggestions in these areas which will assist in our consideration of these complex issues, we will be pleased to hear from you.

Sincerely,

Robert W. Haack

For RELEASE Thursday, March 4, 1971

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C.

Securities Exchange Act of 1934
Release No. 9096

The Commission today announced that it has sent a letter dated March 2, 1971 to the New York Stock Exchange making clear that there is no justification for the fixing of intra-member minimum rates for floor brokerage and clearance on the portion of orders which will be subject to competitive non-member stock exchange commission rates. The Commission had previously called for the Exchange to implement competitive non-member rates on large, institutional-size orders in its letters of October 22, 1970 (Exchange Act Release No. 9007) and February 10, 1971 (Exchange Act Release No. 9079). The Commission's March 2 letter follows:

March 2, 1971

Mr. Robert W. Haack
President
New York Stock Exchange
Eleven Wall Street
New York, New York 10005

Dear Mr. Haack:

We have received inquiries concerning the matter of NYSE intra-member rates for floor brokerage and clearance on portions of orders above the level at which the Exchange will provide for competitive rates pursuant to our February 10, 1971 letter. While that letter did not explicitly so state, the Commission believes it is clear that there is no justification for the fixing of intra-member rates on the portion of orders which will be subject to competitive nonmember rates.

We understand that a subcommittee of the Cost and Revenues Committee has been established to consider the matter of intra-member rates. We expect that the subcommittee, the full committee and the Board will take action to assure that competitive intra-member rates also will be implemented by April 1, 1971 on portions of orders to which competitive nonmember rates will apply.

In addition, we are gratified that a subcommittee has been established to develop for presentation to the Commission by no later than June 30, 1971 a proposed revision of the intra-member charges for floor brokerage and clearance as requested in our October 22, 1970 letter. In view of the expressions of concern by non-clearing members of your Exchange about the propriety of existing intra-member minimum rates,

we expect, should the Exchange propose an intra-member minimum rate schedule for floor brokerage and clearance, it will present an adequa self-regulatory rationale for the proposed schedule and that there wi be fair representation of non-clearing firms on any subcommittee whic may develop such a schedule.

Sincerely,

Hugh F. Owens
Commissioner

For RELEASE Thursday, March 11, 1971

Securities and Exchange Commission
Washington, D. C. 20549

Securities Exchange Act of 1934
Release No. 9103

The Securities and Exchange Commission today announced that it had yesterday sent a letter to the New York Stock Exchange reaffirming the conclusion in its March 8, 1971 letter that the continuation of minimum commission rates on portions of orders above $500,000 beyond April 2, 1971 would be unreasonable and would be contrary to the Exchange Act. The Commission requested the Exchange to so advise its members and stated that the conclusions reached in the Commission's March 8 letter are not altered by the timing of the Exchange's procedural steps to amend its constitution or their outcome. The Commission's March 8 letter, the New York Stock Exchange's response of March 9 and the Commission's reply of March 10 follow:

March 8, 1971

Mr. Robert W. Haack
President
New York Stock Exchange
Eleven Wall Street
New York, New York 10005

Dear Mr. Haack:

As you will recall, on November 9, 1970 you wrote to the Commission stating the Exchange's assumption that the Exchange and its members would have a reasonable time to thoroughly study the conclusion in the Commission's October 22, 1970 letter that minimum commission rates on large, institutional size orders are neither necessary nor appropriate. On February 10, 1971 the Commission wrote to you that we would not object if competitive rates were to apply to the portion of orders which exceed a cut-off point of not more than $500,000 and stated that the Exchange should take immediate action to implement such competitive rates by April 1, 1971.

We understand that the Exchange and its members have very recently been addressing themselves to a number of questions relating to competitive rates which are not yet resolved. Of course, the matter of competitive rates and related questions have been before the Exchange and its membership since October 22, 1970. The Commission appreciates that, as in other situations such as when the surcharge was adopted, the Exchange necessarily will be able to take appropriate interpretive action after as well as before rule changes are adopted.

As the Commission has previously advised the Exchange, the time to implement such competitive commission rates would not extend beyond April 1. However, if operational problems would result from the change occurring during the middle of a business week, the Commission will not object to the Exchange retaining minimum commission rates on such orders through April 2, 1971. Accordingly, your members should be advised promptly that the continuation of minimum commission rates on those portions of such orders beyond that time would be unreasonable and would be contrary to the Exchange Act.

Sincerely,

FOR THE COMMISSION

Hugh F. Owens
Commissioner

March 9, 1971

The Honorable Hugh F. Owens
Office of The Commissioner
Securities and Exchange Commission
500 N. Capitol Street
Washington, D. C. 20549

Dear Commissioner Owens:

As per our discussion with the Commission yesterday morning, and in response to your letter of March 8, we appreciate the opportunity to outline to the Commission what the Exchange is doing to implement competitive rates on orders exceeding $500,000.

Before such a change can be made it is necessary to amend Article XV of the Exchange Constitution dealing with "Commissions and Service Charges." Article XX of the Exchange Constitution contains the procedure which the Board of Governors must follow in proposing amendments to the Constitution. Amendments to the Constitution can only be approved or disapproved by the Exchange membership.

Article XX of the Constitution provides that every proposed amendment to the Constitution must be presented in writing at a regular meeting of the Board or at a Special Meeting called expressly for receiving it. Upon presentation, the proposed amendment must be laid upon the table for at least two weeks. After the minimum two week posting period, the Board of Governors may approve the amendment and submit it to the membership for a vote.

Article XX also provides that the time for balloting shall expire at the end of two weeks following approval and submission of the proposed amendment by the Board of Governors, unless at the end of the two week period less than a majority of the then members have participated in the balloting.

Accordingly, a minimum period of four weeks is required, assuming membership approval, to amend the Exchange Constitution. In addition, Exchange Rule 26 provides that in the case of amendments to Article XV of the Constitution "the text of such amendment shall be posted on the bulletin board, distributed to the membership and publicly announced at least 30 days before action thereon is taken by the Board of Governors." In other words, Rule 26 has the effect of extending the minimum posting period for amendment to the commission Article of the Constitution to 30 days rather than the two weeks required for amendments to other Articles of the Constitution.

The timetable which we have been following, as explained to the Commission at the meeting yesterday morning, calls for a series of meetings to be held with various groups dealing with aspects of the problems which have been raised in connection with the new structure of commission rates which will come into being with the establishment of competitive commission rates. A meeting was held yesterday with representatives from the operational side of the business, and meetings were held today with counsel on the legal questions which have been raised.

A meeting is to be held on intra-member rates in view of the Commission' letter of March 2, which we received last Wednesday, notifying the Exchange that it expected that fixed intra-member rates above the $500,000 level would also cease to apply.

A meeting of the full Costs and Revenues Committee is scheduled for this Thursday, March 11, to review the various recommendations which will hopefully be developed as a result of the consideration of the various problems which are being explored.

We recognize, as the Commission states in its letter of March 8, that the Exchange will be able to take appropriate interpretative action after as well as before rule changes are adopted. However, here we are dealing with a new structure of commission charges which, in effect, overturn commission rates and practices which have existed in the securities industry for many, many years. In our review we have been attempting to visualize the practices which might arise under a scheme of competitive rates. It may be that some of these practices will be inimical to the public interest and therefore must be addressed by the Exchange prior to the implementation of a new commission structure rather than to react to practices after abuses occur.

We are not, as has been repeatedly emphasized to the Commission and its staff, proposing that the implementation of competitive rates be delayed for the sake of delay. We do feel, however, that as thorough an exploration of the problem areas as is possible should be done in the shortest possible time.

As we stated at the meeting with the Commission yesterday, we are proposing that a proposed amendment to the Exchange Constitution be laid upon the table at the policy meeting of the Board of Governors on March 18. As you know, out-of-town members and the three public members of the Board of Governors do not ordinarily attend the weekly meetings of the Board and major matters are reserved for the Board at the policy meeting held on the third Thursday of the month.

When the proposed amendment is laid upon the table at the policy Board meeting on March 18, we also plan to propose that the Board repeal Exchange Rule 26 and thereby shorten the posting period from 30 days to two weeks. After the expiration of the minimum two week posting period, we will move that the Board approve the proposed amendment and submit it to the membership for balloting. As explained previously, the minimum two week balloting period would expire on Thursday, April 15, if this schedule is adhered to.

We have asked the Exchange's counsel, Milbank, Tweed, Hadley and McCloy, for its opinion on the legal impact of the last sentence of your letter of March 8, 1971, before any notice is sent to the Exchange membership.

We hope that the Commission appreciates that we are working diligently on the questions raised by the implementation of a scheme of competitive rates and that the Board of Governors of the Exchange must, absent appropriate commission action under Section 19(b) of the Securities Exchange Act of 1934, adhere to the requirements of the Exchange Constitution in effecting changes in commission rates.

This means that it will not be possible for the Board of Governors, acting under the requirements of the Exchange Constitution, to implement competitive rates on orders exceeding $500,000 prior to April 1 or April 2, but that such rates can be made effective as early as April 16. However, since April 16 is a Friday, for operational reasons it would be advisable to make the change effective on the following Monday, April 19.

In view of the magnitude of the proposed change, the prospect of the continuation of the existing system of fixed minimum commission rates for ten additional trading days beyond April 2 does not seem unreasonable. Whether the Commission's position is legally correct or not, it does not seem that much is accomplished by exposing the member organizations and the exchanges to potential lawsuits, which may be litigated for years, to accelerate the implementation of competitive rates on larger transactions by a few days.

We hope that the Commission will agree and advise us that it has no objection to the Exchange's retaining the existing minimum commission rates through April 16. Let me assure you that Chairman Lasker, Vice-Chairman DeNunzio and I have every intention of following through with this schedule on March 18, if the Commission approves.

Very truly yours,

Robert W. Haack

March 10, 1971

Mr. Robert W. Haack
President
New York Stock Exchange
Eleven Wall Street
New York, New York 10005

Dear Mr. Haack:

This is in reply to your letter of March 9, 1971 in which you respond to our letter of March 8 with respect to commission rate structure by describing the action which the Exchange has taken and proposes to take pursuant to various provisions of your constitution to bring about a modification of Article XV of the constitution to introduce competitive commission rates on that portion of orders which exceeds $500,000. It expresses the view that all of these procedural steps cannot be concluded prior to April 16 or perhaps April 19.

If this were an initial proposition which was first called to your attention on March 8, we would endeavor to accommodate your concern. However, the Commission's determination, following extensive hearings, was brought to your attention on October 22, 1970 and on February 10, 1971 you were advised that action should be taken by April 1. Procedural steps required by your constitution could have been initiated earlier, but we are not attempting to determine the timing of the procedural steps you take pursuant to your constitution. We do, however, adhere to the statement in our letter of March 8 that the continuation of minimum commission rates on portions of orders above $500,000 beyond April 2, 1971 would be unreasonable and would be contrary to the Exchange Act and we believe that you owe it to your members to so advise them. We

assume that in view of this, the procedural steps under your constitution will be taken as rapidly as possible, but the conclusions reached in our letter of March 8 are not altered by the timing of those steps or their outcome.

Sincerely,

FOR THE COMMISSION

Hugh F. Owens
Commissioner

Exhibit Q

938-2401

March 26, 1971

Mr. Irving M. Pollack, Director
Division of Trading and Markets
Securities and Exchange Commission
500 North Capitol Street, N. W.
Washington, D.C. 20549

Dear Mr. Pollack:

The Exchange has reviewed carefully your letter of March 17, 1971 relating to the Commission s advice to the New York Stock Exchange that minimum nonmember and intramember commission rates on orders over $500,000 would be unreasonable and contrary to the Exchange Act after April 2, 1971, and your suggestion that any filings by the American Stock Exchange on this subject under Rule 17a-6 will be expedited so that they may become effective on or before April 5, 1971.

At the outset, the Exchange believes it important to express again its serious concern with the conclusions reached by the Commission concerning minimum commissions. As you know, this Exchange has not been a party to the discussions between the Commission and the NYSE and we know of no findings by the Commission which substantiate the conclusion that fixed commissions on that portion of an order exceeding $500,000 would be unreasonable or contrary to the Exchange Act.

We are also concerned that the Commission's letter of February 10, 1971 to the NYSE suggested that eliminating fixed minimum commissions on orders over $500,000 will provide an opportunity to "gain further experience with competitive rates," thus indicating that consideration may be given to lowering the $500,000 level at some future date.

The Exchange believes that the Commission's decision, while focussing on the level of rates, does not come to grips with the deeper and more crucial issues inherent in the concept of fixed minimum commissions. In this connection, in August, 1968 we expressed in our presentation at the Commission Rate Hearings the following points:

> "First, abolishing the minimum commission would undermine the self-regulatory system that has been carefully and painstakingly developed over the last 34 years. It would undo years of progress during which cooperation between government and the Exchange has developed. It would place upon government the direct burden of regulation.
>
> "Second, if minimum commissions were abolished members would lose the economic incentives that tie them to Exchange rules and regulations designed to benefit the public.
>
> "Third, erosion of membership would follow the end of minimum commissions and the market itself would deteriorate as the volume of orders was reduced. It would become increasingly difficult to maintain the liquidity and continuity that are among the market's unique characteristics.
>
> "Fourth, research information and market data services which the public needs and expects would probably be curtailed.
>
> "Fifth, abolishing minimum commissions would jeopardize the efforts now underway to improve the securities industry's operations. The Exchange and member firms are pressing new projects that are required to meet future needs. These require substantial investments advanced from the membership and derived from commission income.

"Thus, the possible consequences of eliminating minimum commissions pose a threat to the public and to the economy as well as to the securities industry. It would be reckless to jeopardize the self-regulatory structure of an industry that is devoting its major efforts to meeting urgent priorities aimed at improving services to the public."

While the letter of October 22, 1970 from the Commission to the NYSE suggesting eliminating fixed minimum commissions for institutional size orders was previously forwarded to us by a member of the Commission's staff, we have not been a party to any of the subsequent negotiations between the Commission and the NYSE. As a result of articles in the press and through discussions with individuals on the staff of the Commission, we have been aware that such negotiations were taking place, but we have not previously been advised as to the applicability to this Exchange of the results of those negotiations.

Nevertheless, we have carefully considered your letter of March 17 and have determined that in view of the Commission's position, the Exchange is obliged to recommend appropriate revisions to its Constitution and Rules to eliminate fixed minimum commissions on that portion of an order in excess of $500,000.

The Exchange hopes that the position which is currently being taken by the Commission in regard to this matter will not cause serious harm to the securities markets or the investing public and that it will not result in substantial new regulatory problems.

The necessary amendments to the Exchange's Constitution and Rules are presently being prepared and it is anticipated they will be submitted to the Board of Governors at its meeting next week on April 1, 1971. If the Board approves these amendments and the Commission expedites its consideration of such amendments under Rule 17a-8, we plan to submit them to the membership for a vote as soon after April 1 as possible. Since the Exchange s Constitution requires a two-week period for voting, these revisions to the commission rates could become effective, at the earliest, commencing with the opening of business on April 19, 1971.

Mr. Irving M. Pollack

March 26, 1971

We strongly urge that in the event the Commission reaches any further determination respecting the Exchange's commission rates, it will base its determinations on factual findings which are communicated to us and will afford the Exchange an opportunity to comment on such findings.

Sincerely,

/S/ RALPH S. SAUL

RSS:rd

Exhibit R

April 28, 1971

Mr. Irving M. Pollack, Director
Division of Trading and Markets
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Dear Mr. Pollack:

Enclosed, pursuant to Exchange Act Rule 17a-8, are three copies of proposed new Rules 397 and 398.

If the Exchange's Constitutional amendments eliminating minimum nonmember and intramember rates on portions of orders in excess of $500,000 are approved by the membership, it is proposed that these Rules become effective on May 3, 1971. Thus, the Exchange is requesting acceleration of the required 21-day filing period under Rule 17a-8.

Because of operational considerations, new Rule 397 requires commissions to be charged on the basis of lowest priced executions first. New Rule 398 requires member firms to report specified information on orders which they execute when the amount involved exceeds $500,000. This will enable the Exchange to better observe the workings of competitive rates and focus on any problems that may arise.

If you have any questions, please call me.

Sincerely,

RJB:mvd
Enclosures

/S/ ROBERT J. BIRNBAUM

bcc: Messrs. Saul, Kolton, Walker and Nash

EXHIBIT B

NEW RULES

Computation of Commissions on Stocks

Rule 397. The minimum commission required to be charged under Section 2 of Article VI shall be computed on the basis of the lowest priced executions first.

Reports of Executions of Orders Exceeding $500,000

Rule 398. Promptly following the 10th day of each calendar month each member or member organization shall report the following information to the Exchange with respect to each order executed, either as principal or agen during the preceeding calendar month for the purchase or sale of any stock admitted to dealings upon the Exchange, where the amount involved in such order exceeds $500,000:

(1) the name of the stock;

(2) whether the customer of the member or member organization purchased or sold the stock. Where the member or member organization had all or a portion of both sides of the transaction this should be indicated and the amount on each side should also be indicated;

(3) whether the member or member organization acted as agent or principal, or both, and the number of shares on each side of the transaction with respect to which the member or member organization so acted;

(4) the date of execution;

(5) the market or markets where executed;

(6) the number of shares in the order and the number of shares in each execution included within the order;

(7) the commission or commissions charged on each portion of the order; and,

(8) such other information as the Exchange may from time to time require.

For the purposes of this rule, an order shall be as defined in Article ~~XV~~ VI, Section 2(f)(2) of the Constitution.

Exhibit

100

OFFICE OF THE CHAIRMAN

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

MAR 9 1972

Mr. Paul Kolton
President
American Stock Exchange
86 Trinity Place
New York, New York 10006

Dear Mr. Kolton:

As you know, the Commission's February 2 Statement on The Future Structure of the Securities Markets concluded that a reduction to $300,000 is indicated in the breakpoint above which commission rates on stock exchange transactions should be competitively determined. We indicated there that the reduction should take effect in April 1972, after a year's experience with competitive rates on the portion of an order exceeding $500,000. Since then we have received no evidence which would lead us to conclude that this reduction in the breakpoint should not take place on schedule. Accordingly, we believe that each exchange should begin to draft rule changes which may be implemented at the forthcoming March policy meeting of its Board. We will certainly advise you should evidence come to our attention between now and April which would require us to change our view on your exchange proceeding to lower that breakpoint to $300,000 by April.

The Commission's February 2, 1972 Statement further stated that "we have also determined to move toward the point at which commission rates on all orders of institutional size will be, at least in part, subject to competitive rates." In view of the possibility of future Commission requests for further reductions in the breakpoint level, your exchange should at this time make any rule changes necessary to enable it to comply promptly with such requests.

Sincerely,

William J. Casey

William J. Casey
Chairman

March 28, 1972

Mr. Irving Pollack
Securities and Exchange Commission
500 North Capitol Street
Washington, D. C. 20549

Dear Mr. Pollack:

Enclosed for filing pursuant to Exchange Act Rule 17a-8 are three copies of amendments to the American Stock Exchange Constitution and Rule 398 to effect the reduction of the breakpoint for negotiated rates to the $300,000 level.

Chairman Casey, in his letter of March 9, 1972 to Mr. Paul Kolton, pointed out that the Commission's February 2nd Statement on the Future Structure of the Securities Markets concluded that this reduction should take effect in April.

In addition, we understand that the New York Stock Exchange has acted with respect to a similar letter addressed to that Exchange to effect comparable changes to become effective with trades of April 24th.

Accordingly, we request acceleration of the normal 21-day review period in order that the proposed amendments may be formally approved by the Board of Governors at its next meeting to be held Wednesday, March 29th. This would permit implementation of the new $300,000 breakpoint on the same date as the New York Stock Exchange, thus minimizing programming problems for member firms.

Chairman Casey's letter of March 9th also referred to the possibility of future Commission requests for further reduction in the breakpoint level and as such indicated that the Exchange should at this time make any rule changes necessary to enable it to comply promptly with such requests.

Mr. Irving Pollack
Securities and Exchange Commission

March 28, 1972

It is presently possible for the Board and the membership to amend the Constitution and rules within a month's time. The Exchange's procedures with respect to Constitutional amendments do not call for the 2-week tabling period applicable at the New York Stock Exchange. Further, member organizations require time in cases of rate changes for the computer programming necessary to implement the changes. For these reasons, it is believed that changes in procedure would not be appropriate for this Exchange.

The proposed Constitutional amendments and amendments to Rule 398 are attached. If you have any questions concerning this matter, please do not hesitate to call me.

Very truly yours,

JJQ'N/dm
Enclosures

P.S. - In order to expedite matters, the above letter was read over the telephone to your secretary today.

AFFIDAVIT OF ROBERT M. BISHOP IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGEMENT AND EXHIBITS ANNEXED

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - x

RICHARD A. GORDON, etc., :

Plaintiff, :

-against- :

NEW YORK STOCK EXCHANGE, INC., et al. :

Defendants. :

- - - - - - - - - - - - - - - - - - x

71 Civ. 1496 (MEL)

AFFIDAVIT IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ROBERT M. BISHOP, being duly sworn deposes and says:

1. I am the Director of the Department of Member Firms and Vice President of the defendant New York Stock Exchange, Inc. (the "NYSE"), reside at 4 Kimball Circle, Westfield, New Jersey 07090, and have my business office at 4 New York Plaza, New York, New York 10005. I make this affidavit upon personal knowledge, my examination of the records of the NYSE and in support of defendants' motion for summary judgment.

2. The NYSE was founded in 1792 and is now a corporation organized under the laws of the State of New York. Since its inception, the NYSE's principal activity has been and continues to be to provide for its members and the investing public a two-way auction market in securities listed on the NYSE. (A two-way auction market is one in which there is competition not only between buyers and sellers but also among

sellers and buyers). At present, there are 1366 members of the NYSE (membership is only available to individuals) and 527 member organizations (partnerships and corporations in which at least one general partner or director, owning voting stock, is an NYSE member).

3. Since its founding, the NYSE has had and still has rules limiting access to NYSE facilities and rules prescribing the minimum rates of commission to be charged on transactions in securities listed on the NYSE, although the level and structure of these rates has been changed from time to time. Violation of the NYSE's rules with respect to minimum commissions which must be charged to non-members has at all times been punishable by disciplinary action against members and member organizations.

4. Following the enactment of the Securities Exchange Act of 1934 (the "Exchange Act"), the NYSE on September 11, 1934 submitted to the Securities and Exchange Commission (the "SEC") an application for registration as a national securities exchange, together with copies of its then Constitution and Rules which included provisions requiring members to charge specified minimum commissions. A copy of the Constitution and Rules relating to commissions submitted in 1934 is annexed hereto as Exhibit 1.

5. The SEC approved the NYSE's application by an order dated September 28, 1934 (copy annexed as Exhibit 2) making registration effective on October 1, 1934, in which the Commission expressly stated its finding that the Constitution and Rules of the NYSE "are just and adequate to insure fair dealing and to protect investors" and provided "for the expulsion, suspension

or disciplining of a member for conduct or proceeding inconsistent with just and equitable principles of trade."

6. Since such registration on October 1, 1934, the provisions of the Constitution prescribing minimum rates of commission have been changed by the NYSE some ten times, effective on the following dates: January 3, 1938; March [illegible], 1942; November 3, 1947; November 9, 1953; May 1, 1958; December 5, 1968; April 5, 1970; April 5, 1971; March 24, 1972; and April 24, 1972. Each such change was recommended, and made, on the basis of factual studies and/or formal reports prepared by the NYSE or the SEC. Indeed, the commission rate structure which is presently in effect is the product of studies by the NYSE extending over more than a decade, two major studies conducted by the SEC [Report of the Special Study of Securities Markets, House Doc. No. 95, 88th Cong., 1st Sess. (1963) and The Institutional Investor Study, House Doc. No. 92-64, 92nd Cong., 1st Sess. (1971)] and public hearings conducted by the SEC extending over a period of more than three years.

7. In each case of a rule change, the NYSE forthwith furnished copies of the rule change to the SEC as required pursuant to § 6(a)(4) of the Exchange Act and SEC Rule 17a-8.

8. At the time of the proposed change in commission rates in 1958, the SEC ordered an inquiry as to whether such changes "appear to be reasonable and in accordance with the standards contemplated by the applicable provisions of the Securities Exchange Act of 1934". (SEC Release announcing study annexed as Exhibit 3). The NYSE aided the SEC in making this study by

submitting a substantial volume of detailed data and statistical information in connection with the finances, income, expenses and profits of member organizations.

9. After the completion of that study, by letter of January 28, 1959 (Exhibit 4), the SEC requested the NYSE to make certain changes in its 1958 rate schedule; and, following a series of meetings between the NYSE and SEC staff, the NYSE complied with the SEC's requests. The completion of the study was publicly announced in a release dated February 20, 1959 (Exhibit 5), which expressly stated that the aforementioned study was made in accordance with the provisions imposed upon the Commission by § 19(b) of the Securities Exchange Act of 1934 with respect to the rules relating to "fixing of commission rates", and noted that "after extensive discussions the Exchange is taking steps in line with the suggestions of the Commission."

10. Even after the SEC had completed its study and had had its findings implemented, however, monitoring and study of the commission rates continued. The NYSE had then a Special Committee on Member Firms Costs and Revenues (the "C&R Committee") whose delegated function from the Board of Governors was to review and study, on a continuing basis, the need for revisions and modifications of the commission rate structure to ensure that the NYSE fulfilled its federally mandated duty of self-regulation and its specific statutorily-imposed responsibilities with respect to the fixing of reasonable rates of commission.

11. The recent history of the revisions of the NYSE commission rate structure is of particular interest, not only because the particular changes made are specifically challenged in this action, but also because those changes were the product of the

most extensive and meticulous analysis that the SEC had ever made of the issues.

12. After implementing the modifications of the commission rate transmitted by the SEC to the NYSE in 1959, the SEC requested that the NYSE undertake a study as to the need and feasibility of implementing a volume discount. This project was assigned to the C&R Committee, which commenced its study in late 1962.

13. After a review of an extensive amount of income and expense data relating to member organizations' securities commission business, the Committee was able to make the preliminary determination that, because commission rate structure failed to provide any discounts for block trades (i.e., the commission on a 10,000-share lot was 100 times the commission on a 100-share lot), there existed the possibility that large traders would seek to execute orders off the exchanges at commission rates more reflective of economies of scale and thus fragment the central market. The C&R Committee concluded that this potential could become a real threat to the liquidity, depth and continuity of the central securities auction market because of the growing volume of institutional-sized business. Furthermore, the preliminary investigation of the C&R Committee revealed the existence of numerous ingenious reciprocal and rebative practices devised by block traders and their agents to circumvent the commission rates, such as customer directed "give-ups." Recognition of the possible existence of these problems investigated by the Committee had been expressed in the SEC's Report of the Special Study of Securities Markets, House Doc. No. 95, Pt. 2, pp. 347-et seq., 88th Cong., 1st Sess. (1963). The Committee's initial conclusions substantiated the SEC's stated

concern.

14. In late 1965, the C&R Committee reported its preliminary findings in connection with the need for a volume discount to the NYSE Board of Governors. In turn, the Board of Governors, through the then president of the NYSE, G. Keith Funston, relayed the C&R Committee's recommendations to the SEC by letter dated November 29, 1965.

15. SEC Chairman Manuel F. Cohen, writing for the Commission, replied on December 22, 1965 stating:

> "We agree. . . that a volume discount is necessary and appropriate and [understand] that the steps are being taken [by the Exchange] to devise a workable arrangement." (Exhibit 6)

16. In light of the SEC's indication of approval of a modification of the commission rate structure, the C&R Committee broadened the scope of its study of the volume discount question with an eye toward developing a specific proposal which would alleviate, if not eliminate, the problems of give-ups, reciprocal practices and market fragmentation. The SEC staff was kept periodically advised of the C&R Committee's efforts and, on January 2, 1968, the outline of a proposal was submitted to the SEC (Exhibit 7). The Commission made no specific response.

17. However, on January 26, 1968, the SEC proposed its own rule for adoption by national securities exchanges, Rule 10b-10, specifically designed to deal with one aspect of the volume discount problem - give-ups. The substance of the SEC proposal was set forth in SEC Securities Exchange Act of 1934 Release ("SEC Release") No. 8239. Proposed Rule 10b-10 basically

prohibited give-ups. In conjunction with this announcement the Commission also made public the NYSE proposal and invited all interested persons to submit written comments with respect to the two proposals on or before March 1, 1968. (SEC Release No. 8239 is annexed hereto as Exhibit 8).

18. On May 28, 1968, the SEC wrote to the NYSE stating its belief, based upon the Commission's extensive and continuing study of the commission rate structure of national securities exchanges, that "changes in the present commission rate structure are required to benefit the investing public," and announced its intention to hold public hearings pursuant to its authority under Section 21(a) of the Exchange Act on the rate structure issue commencing July 1, 1968 (Exhibit 9).

19. That same letter of May 28, 1968 also embodied a request, made pursuant to the Commission's Section 19(b) authority to review and revise NYSE rules fixing reasonable rates of commission, that the NYSE implement, on or before September 15, 1968, rules in respect of the commission rates contained in Article XV of the NYSE Constitution consistent with either (a) an SEC-revised commission schedule (attached to the May 28, 1968 letter) or (b) the elimination of minimum commissions on all orders in excess of $50,000 including reduction or elimination of the intra-member rate for non-executing member firms.

20. The SEC also emphasized in its letter of May 28, 1968 that the Commission's directive was purely an interim step made "in the context of [its] responsibilities to consider the national policies embodied both in the securities laws and in the antitrust laws." The matters discussed in the May 28, 1968 letter were simultaneously made public by SEC Release No. 8324

(Exhibit 10).

21. Contemporaneously with the transmittal of the SEC's letter of May 28, 1969, and the issuance of SEC Release No. 8324, the Commission promulgated an order directing a public investigation of the commission rate structure of national securities exchanges and designating hearing officers. (Said order is annexed hereto as Exhibit 11).

22. During the period prior to the commencement of the public hearings scheduled for July 1, 1968, the SEC staff and the NYSE were in continual communication, and data relating to the interim revisions of the NYSE's minimum commission schedule were reviewed. (See Exhibits 12 and 13).

23. On June 27, 1968, the NYSE Board of Governors approved three basic elements of a new commission rate structure -- 1) a volume discount; 2) access for non-member broker-dealers; and 3) prohibition of customer-directed give-ups. (See Exhibit 14, Special Membership Bulletin of June 27, 1968).

24. On August 8, 1968, the then president of the NYSE, Robert W. Haack, wrote on behalf of the NYSE, replying to the SEC's interim directive stated in the Commission's letter of May 28, 1968 [Exhibit 9]. In that letter, Haack submitted for the SEC's consideration the three part proposal approved by the Board of Governors on June 27, 1968, as a means of complying with the Commission's request for interim changes. A part of the proposal was the NYSE's suggestion that the SEC's initially recommended form of a volume discount be modified so as to embrace all public orders of more than 1,000 shares of stock. (Letter of August 8, 1968 annexed hereto as Exhibit 15).

25. On August 20, 1968, the NYSE wrote a further

letter to the SEC amplifying the discussion in the August 8, 1968 letter [Exhibit 15]. On August 30, 1968, SEC Chairman Manuel Cohen replied to these two letters by modifying the Commission directive of May 28, 1968, to the NYSE proposal with the implicit condition that, if the membership failed to adopt the revised schedule, the SEC's alternative directive for the elimination of minimum commissions on orders in excess of a certain size might be directed to be implemented. (Exhibit 16)

26. By SEC Release No. 8399, dated September 4, 1968, the SEC further modified its May 28, 1968, directive by extending the mandated effective date for the interim changes of the schedule from September 15, 1968, to December 5, 1968. On December 5, 1968, the NYSE's interim revision including, inter alia, a volume discount in the commission rates to be charged on public orders involving more than 1,000 shares of stock, became effective.

27. During the period 1968 to 1970, the securities industry experienced a tremendous growth in the volume of public transactions. Member organizations of the NYSE were forced to make drastic and costly expansions to respond to this peak demand. Despite efforts to cope with the swell in public trading, the NYSE membership found its facilities overburdened and its resources strained. The volume discount enacted in December, 1968, threatened to exert further financial pressures because its predictable effect on commission income would be to diminish revenues. Moreover, despite increasing costs, there had been no increase in commission levels in nearly a decade. The result was that a large percentage of the brokerage firms were unable to operate profitably, particularly those member firms handling

principally small orders; and the prognosis was for an exacerbation of this condition.

28. Thus, on February 13, 1970, the NYSE formally presented to the SEC a request for interim relief (to be implemented pending conclusion of the rate hearings, commenced on July 1, 1968 and then still in progress) based upon statistical evidence documenting the financial distress of the industry. (Exhibit 17).

29. On March 16, 1970, the NYSE supplemented its presentation of the need of the industry for a commission increase. On March 19, 1970, the NYSE submitted to the SEC its proposal for the necessary relief in the form of a rule providing for the imposition of an interim service charge, in addition to the minimum commission chargeable, on all public transactions in securities listed on the NYSE involving 1,000 shares of stock or less. (Exhibit 18).

30. The SEC replied, by letter of April 2, 1970, stating that the Commission's data confirmed the need for the relief demanded and noting that the financial difficulties prevailing in the industry had "influenced many firms to impose limitations on their service to small investors". Therefore, the SEC continued, it would accept the imposition of the service charge (subject to Commission monitoring), provided that its effective term be limited to 90 days and the NYSE take all necessary steps to ensure that full brokerage services be restored for small investors. (Exhibit 19) The interim service charge became effective on April 6, 1970 and was expected to expire on July 6, 1970.

31. Prior to the anticipated expiration date, however,

the ongoing study of NYSE member firm financial data by the C&R Committee revealed the necessity of an extension of the interim service charge. Thus, on June 18, 1970, President Haack wrote SEC Chairman Hamer Budge relaying the C&R Committee findings and indicating that in light of the length of time which would pass before the promulgation and acceptance of a new commission rate structure, an extension of the interim service charge for at least an additional 90 days, commencing July 5, 1970, was necessary.

32. One June 29, 1970, the NYSE supplemented its proposal for an extension by supplying the SEC with additional statistical material justifying the extension of the service charge.

33. In SEC Release No. 8923 of July 2, 1970, the SEC announced that the Rate Structure Hearings (then still in progress) would be reconvened on July 13, 1970, for the purpose of receiving evidence on the necessity of extending the service charge. The SEC stated that it would not take action to terminate the service charge pending its determination of the necessity of its extension but conditioned its non-objection upon the same terms and conditions imposed on initiation of the charge. In addition, the Commission expressly conditioned the continuation of the surcharge upon the NYSE's agreement that it would not require the SEC to proceed under Section 19(b) of the 1934 Act if the Commission should determine that the interim service charge should be terminated. (Exhibit 20).

34. Hearings were conducted by the SEC on the extension of the service charge during the week of July 13 through July 17,

1970. In addition to the NYSE, testimony was received from the Association of Stock Exchange Firms; Patteson Branch of Branch & Co. (an NYSE member firm); Hans Randolph Reinisch and Evelyn Y. Davis (private investors); the Association of Investment Brokers; the National Association of Investment Clubs; Sam Sturniel (registered representative); National Investor Relations Institute; and the American Association of Securities Representatives. A number of letters were also received in response to the SEC's invitation for public comment on the service charge proposal.

35. In preparation for these hearings and pursuant to the SEC's mandate to the NYSE to gauge the impact of the interim service charge, the NYSE instituted a monitoring program which collated data as to the financial condition of the industry and inquired into 1) what efforts were being made to reduce costs; 2) whether size restrictions on orders were eliminated; and, 3) whether steps were being taken to limit withdrawal of capital.

36. The SEC continued to monitor and assess the results of the NYSE's program of study as to the need and impact of the interim service charge. SEC approval was not at any time revoked, but the interim service charge was repealed when the present commission rate structure was made effective on March 24, 1972.

37. On June 30, 1970, the NYSE proposed to the SEC a permanent commission rate schedule, or "rate package", to replace the interim reforms then in effect. Public hearings were held by the SEC on its "reasonableness" under the mandate of Sections 19(b) and 21(a) of the Exchange Act. (Exchange Act Release No. 9007 dated Oct. 22, 1970 annexed hereto as Exhibit 21).

38. On October 22, 1970, Chairman Budge of the SEC wrote

to the NYSE informing it that "fixed charges for portions of orders in excess of $100,000 are neither necessary nor appropriate". (Exhibit 22). Then, on February 10, 1971, the SEC announced that "the Exchange should take immediate action to implement, by April 1, 1971, the Commission's finding that fixed minimum commissions on institutional-sized orders were neither necessary nor appropriate". The SEC, however, indicated that, in lieu of the proposed $100,000 "breakpoint" for negotiated rates, it would accept $500,000. (Exhibit 23).

39. The NYSE responded on March 9, 1971, that the proposed April 1 deadline did not allow sufficient time to review the SEC's negotiated rate proposal and implementations of a constitutional amendment. The SEC reiterated its directive to implement the negotiated rates at a $500,000 breakpoint and admonished the NYSE that the maintenance of minimum commission rates on portions of orders above $500,000 after the April 1 deadline "would be unreasonable and could be contrary to the Exchange Act." (Exhibit 24).

40. Despite reservations on the part of the NYSE that the accelerated procedure for implementing the new rate proposal urged by the SEC was not in accord with Section 19(b) of the Exchange Act, the NYSE moved as expeditiously as possible to comply and adopted the necessary constitutional changes on April 5, 1971.

41. It was stressed by the Commission that the new rules and the $500,000 breakpoint did not represent a final determination and that the rules were "experimental". The SEC indicated that both the Commission and the NYSE would monitor the impact of the changes and that revisions could be expected.

42. Pursuant to the SEC's directive on monitoring, the NYSE, simultaneously with the enactment of the rules regarding negotiated commission rates on that part of orders in excess of $500,000, adopted Rule 384, which required each member to report detailed information on all orders exceeding $500,000.

43. The NYSE transmitted its monitoring information on the impact of negotiated commissions in the form of quarterly reports. Based upon these data and the Commission's own studies, the SEC concluded in its February 2, 1972 "Statement of the Future Structure of the Securities Markets", that the breakpoint between fixed and negotiated commissions should be lowered from $500,000 to $300,000 in April, 1972, and noted that if the Exchange failed to take the required action within 90 days, the Commission would move to implement the reduction. (Exhibit 25).

44. The SEC reiterated its conclusion, announced February 2, 1972, in a letter, dated March 9, 1972, from SEC Chairman William J. Casey to the NYSE, in which it was also indicated that further reductions in the breakpoint were being contemplated.

45. On March 16, 1972, the NYSE Board of Governors approved in principle the amendments to the Constitution which would reduce the breakpoint to $300,000 in compliance with the directive of the SEC. On March 17, 1972, the proposed amendments were submitted to the SEC. (Exhibit 26).

46. The NYSE then wrote the SEC on March 23, 1972, setting forth the timetable the Board of Governors intended to follow in implementing the breakpoint reduction: final action by the Board on March 30, 1972; submission to the membership on April 12, 1972; and, assuming affirmative action, an effective

date of April 24, 1972. The NYSE also indicated it would continue the monitoring of the impact of negotiated commission rates as directed by the SEC. (Exhibit 27).

47. During the course of this review, study and interim revision of the 1958 commission rate structure, the SEC was engaged in a series of public hearings which commenced on July 1, 1968 and were terminated in 1971. These hearings and the other regulatory activity during that period with respect to commissions (described above) resulted in the proposal by the NYSE and approval by the SEC of the present commission rate structure, effective March 24, 1972, which repealed the previously adopted volume discount and the interim service charge and replaced it with a schedule of commission rates incorporating a cost-related discount for volume transactions and negotiated rates of commission on that portion of orders in excess of $300,000. The present commission rates, however, may not reflect a final resolution by the SEC of the commission rate structure. Indeed, both the NYSE and the SEC intend to review, on a continuing basis, the propriety and feasibility of reducing the breakpoint between minimum and negotiated rates after a sufficient period has elapsed under the present rules.

Robert M. Bishop

Robert M. Bishop

Sworn to before me this

4th day of December, 1972.

John P. Foynes

Notary Public

JOHN P. FOYNES
NOTARY PUBLIC, State of New York
No. 31-1294125
Qualified in New York County
Commission Expires March 30, 1973

ARTICLE XIX.

Commissions.

*SEC. 1. Commissions shall be charged and collected upon the execution of all orders for the purchase or sale for account of others, of securities admitted to dealings upon the Exchange and these commissions shall be at rates not less than the rates in this Article prescribed; and shall be net and free from any rebate, return, discount or allowance made in any shape or manner, or by any method or arrangement direct or indirect. No bonus or percentage or portion of a commission, whether such commission be at or above the rates herein established, or any portion of a profit except as may be specifically permitted by the Constitution or a Rule adopted by the Governing Committee, shall be given, paid or allowed, directly or indirectly, or as a salary or portion of a salary, to a clerk or person for business sought or procured for any member of the Exchange or firm registered thereon. Obligation to charge and collect. No rebatement or allowance for business procured

†SEC. 2. Commissions shall be as follows: To non-members. Joint accounts and non-member partners.

(a) *On business for parties not members of the Exchange, including joint account transactions in which a non-member is interested; and on transactions for partners not members of the Exchange:*

‡ON STOCKS: Stocks.

(except as to Ten-share-unit Stocks, as stated below)

PRICE	RATE PER SHARE
Selling under 50¢	As mutually agreed
Selling at 50¢ and above but under $1	Not less than 3¢
Selling at $1 and above but under $10	Not less than 7½¢
Selling at $10 and above but under $25	Not less than 12½¢
Selling at $25 and above but under $50	Not less than 15¢
Selling at $50 and above but under $75	Not less than 17½¢
Selling at $75 and above but under $100	Not less than 20¢
Selling at $100 and above but under $200	Not less than 25¢
Selling at $200 and above but under $250	Not less than 30¢
For each additional $50 in price	5¢ additional

provided, however, that on every transaction which involves an amount of $15 or more, the minimum commission shall be not less than $1.00. $1.00 minimum.

*As amended May 13, 1926.
†Effective June 10, 1925.
‡See also Paragraph (a) on page C-56.

Ten-share-unit stocks.

*†On Ten-Share-Unit Stocks:

(as designated by the Committee of Arrangements)

PRICE	RATE PER SHARE
Selling at less than $1 per share	As mutually agreed
Selling at $1 per share and above but under $5	Not less than 5¢
Selling at $5 per share and above but under $10	Not less than 10¢
Selling at $10 per share and above but under $100	Not less than 20¢
Selling at $100 per share and above	The same rates as provided for other stocks.

Bonds.

**†On Bonds:

PRICE PER $1,000 OF PRINCIPAL	RATE PER $1,000 OF PRINCIPAL
Selling at less than $10	Not less than 75¢
Selling at $10 and above, but under $100	Not less than $1.25
Selling at $100 and above	Not less than $2.50

Rights.

On Subscription Rights:

PRICE	RATE PER RIGHT
Selling under 50¢	As mutually agreed
Selling at 50¢ and above, but under $1	Not less than 3¢
Selling at $1 and above, but under $5	Not less than 5¢
Selling at $5 and above, but under $10	Not less than 7½¢
Selling at $10 and above	Not less than 15¢

To members.

(b) *On business for members of the Exchange when a principal is not given up:*

Stocks cleared.

†On Stocks:

(except as to Ten-share-unit Stocks as stated below)

PRICE	RATE PER SHARE
Selling under 50¢	As mutually agreed
Selling at 50¢ and above but under $1	Not less than ¾¢
Selling at $1 and above but under $10	Not less than 1¾¢
Selling at $10 and above but under $125	Not less than 3¾¢
Selling at $125 and above	Not less than 5¢

*Effective June 10, 1926. As amended January 7, 1931.
†See also Paragraph (c) on page C-56.
**As amended October 29, 1925, January 17, 1930, June 29, 1932, and May 11, 1933.

*†On Ten-Share-Unit Stocks: Ten-share-unit stocks cleared.

(as designated by the Committee of Arrangements)

PRICE	RATE PER SHARE
Selling at less than $1 per share	As mutually agreed
Selling at $1 per share and above but under $5	Not less than 2c
Selling at $5 per share and above but under $10	Not less than 4¢
Selling at $10 per share and above	Not less than 8¢

**†On Bonds: Bonds cleared.

PRICE PER $1,000 OF PRINCIPAL	RATE PER $1,000 OF PRINCIPAL
Selling at less than $10	Not less than 50¢
Selling at $10 and above but under $100	Not less than 62½¢
Selling at $100 and above	Not less than $1.25

On Subscription Rights: Rights cleared.

PRICE	RATE PER RIGHT
Selling under 50¢	As mutually agreed
Selling at 50¢ and above but under $1	Not less than ¾¢
Selling at $1 and above but under $5	Not less than 1¼¢
Selling at $5 and above but under $10	Not less than 1⅞¢
Selling at $10 and above	Not less than 3¾¢

(c) *On business for members of the Exchange when a principal is given up:* To members.

†On Stocks: Stocks not cleared.

(except as to Ten-share-unit Stocks, as stated below)

PRICE	RATE PER SHARE
Selling under 50¢	As mutually agreed
Selling at 50¢ and above but under $1	Not less than ½¢
Selling at $1 and above but under $10	Not less than 1¼¢
Selling at $10 and above but under $125	Not less than 2½¢
Selling at $125 and above	Not less than 3¢

Except that when the amount dealt in is less than 100 shares of stock the commission shall be not less than 1¢ per share on stocks selling below $10 per share and 2¢ per share on stocks selling at $10 per share and over. Odd lots of stock not cleared.

*Effective June 10, 1925. As amended January 7, 1931.
†See also Paragraph (d) on page C-56.
**As amended October 29, 1925, January 17, 1930, June 29, 1932, and May 11, 1933.

Ten-share-unit stocks not cleared.

*†On Ten-Share-Unit Stocks:

(as designated by the Committee of Arrangements)

PRICE	RATE PER SHARE
Selling at less than $1 per share	As mutually agreed
Selling at $1 per share and above but under $5	Not less than 1¢
Selling at $5 per share and above but under $10	Not less than 2¢
Selling at $10 per share and above	Not less than 4¢

Bonds not cleared.

**†On Bonds:

PRICE PER $1,000 OF PRINCIPAL	RATE PER $1,000 OF PRINCIPAL
Selling at less than $10	Not less than 25¢
Selling at $10 and above but under $100	Not less than 37½¢
Selling at $100 and above	Not less than 75¢

Rights not cleared.

On Subscription Rights:

PRICE	RATE PER RIGHT
Selling under 50¢	As mutually agreed
Selling at 50¢ and above but under $1	Not less than ½¢
Selling at $1 and above but under $5	Not less than ¾¢
Selling at $5 and above but under $10	Not less than 1¼¢
Selling at $10 and above	Not less than 2½¢

Exceptions to above rates.

‡*(d) On Obligations of the United States, Porto Rico, Philippine Islands, and States, Territories and Municipalities therein; Bonds or Notes having five years or less to run; Securities which, pursuant to call or otherwise, are to be redeemed within twelve months:*

Such rates to members or non-members as may be mutually agreed upon; provided, however, that the Committee on Quotations and Commissions may determine special rates on any or all of the above-mentioned securities, reporting the same to the Governing Committee.§

Original issues.

Sec. 3. If a member of the Exchange, or firm registered thereon, engages in transactions in which the member or firm is acting as a dealer in securities of original issue, the rates of commission prescribed in this Article shall not apply to such transactions if not made on the Exchange; provided, however, that such transactions shall be subject to such

*As amended June 10, 1926 and January 7, 1931.
†See also Paragraph (d).
**As amended October 23, 1925, June 28, 1928, January 17, 1930, June 29, 1932, and May 11, 1933.
‡As amended December 16, 1926.
§See Note 1, on page C-131.

regulations as the Committee on Quotations and Commissions may from time to time prescribe.

Sec. 4. No member shall make a proposition for the transaction of business at less than the minimum rates of commission prescribed in this Article. Proposed violation.

[illegible]

CHAPTER VII.

Commissions.

Sec. 1. In transactions where orders are received from a non-member, and the broker filling the order is directed to give up another broker or clearing firm, the responsibility for collecting the full commission specified in Section 2, Article XIX of the Constitution shall rest with the broker or clearing firm settling the transaction. — Clearances on orders from a non-member.

Sec. 2. In transactions where orders are received from a member, and a clearing firm is given up by said member or by his order, the responsibility of collecting the full commission specified in Section 2, Article XIX of the Constitution shall rest with said clearing firm; and it shall be the duty of the broker who executes such orders to report the transactions to the clearing firm and render his bill to them therefor at the rates specified; a broker who executes an order for a member and clears the security himself must charge the rates specified in said Section. — Clearances on orders from a member.

Sec. 3. When a non-member shall cause to be executed in a market not in the United States or Canada an order for the purchase or sale of securities listed on this Exchange, and said purchase or sale shall be accepted by a member of this Exchange, or firm registered thereon, for the account of said non-member, the commission specified in Section 2, Article XIX of the Constitution shall be charged the non-member in addition to any commission charged by the party or parties making the transaction. — Transactions made outside of United States or Canada.

Sec. 4. When securities are received or delivered for a non-member, on a privilege, the commission specified in paragraph (a) of Section 2, Article XIX of the Constitution must be charged. — Deliveries on privileges.

Sec. 5.* When a member receives and delivers securities for another member, the clearing charge for said service may be a matter of mutual agreement, said charges to be based upon a stipulated sum of money for each one hundred shares of stock or one thousand dollars of bonds; the payment of a certain sum of money for any period of time for said service, irrespective of the number of shares or amount of bonds cleared, is forbidden. — Clearances for members.

Sec. 6. No member shall without commission, or for a nominal commission, transact or offer to transact for any customer who is dealing in securities dealt in on the Exchange, any business in cotton, grain, produce or other commodities. — Business at nominal or no commission.

*As amended November 23, 1927.

Reciprocal business in commodities.

SEC. 7. No member shall agree to give reciprocal business in cotton, grain, produce or other commodities, dependent upon the amount of business received by him in securities dealt in on the Exchange.

Bunched orders.

SEC. 8. The execution of "bunched" orders, without the charging of the required commission, is forbidden.

Unusual interest rates or money advances.

SEC. 9. Any agreement or arrangement between a member and his customer, whereby special and unusual rates of interest are given or money advanced upon unusual terms, with intent to give special or unusual advantage to such customer, for the purpose of securing his business, is forbidden.

Interest on out-of-town transactions.

Transactions in securities dealt in on the New York Stock Exchange being based on delivery and settlement in New York City all payments with respect thereto must be made accordingly.

If settlements with customers in the case of sales by them are made at any time prior to the actual date of settlement in New York or at any time subsequent thereto in the case of purchases, interest, at not less than the approximate ruling rates for money, for the full time involved must be deducted or added as the case may be.

*In transactions where the amount of interest is less than $1.00, the collection of the interest involved may be waived at the discretion of the member. Any abuse of this privilege may be held to be an act detrimental to the interest and welfare of the Exchange.

Short sales.

SEC. 10. An allowance for interest on short sales of stock shall not be more than the loan market rates for the stocks borrowed or used for such short sales.

"Over the counter" transactions.

†11. No member shall make any transaction in a listed security "over the counter" for his own account, or the account of his firm, or for that of a partner, or for any account in which either he or they have a direct or indirect interest, and a reverse operation upon the Exchange at or about the same time, wherein the difference between the purchase and sale prices is less than the recognized commission on such a purchase or sale.

Transfer taxes.

SEC. 12. No member shall, directly or indirectly, by agreement or otherwise, assume or bear for his own account or relieve his principal from any part of any stamp tax imposed by the United States or by any State on transfers or sales of securities.

---

*Amended May 25, 1927.

†See note 8 on page C-132.

*Sec. 13. No member shall assume for his own account or for the account of his firm, a contract made for a customer after a loss to the customer has been established or ascertained unless the contract was made by mistake or unless the consent of the Committee on Quotations and Commissions has first been obtained. Assuming contract.

†Sec. 14. Unless otherwise agreed by the parties concerned, all payments between members of the Exchange on account of commissions on business when a principal is given up shall be made through Stock Clearing Corporation as provided in its By-Laws and Rules. Method of payment of Floor commissions.

*Adopted October 26, 1927.
†Adopted September 14, 1932—effective October 1, 1932.

[illegible] in addition to the approval required by Section 2, receive the approval of the Committee of Arrangements.

†Sec. 4. No member of the Exchange or firm registered thereon shall issue any market letter unless the same shall have been approved by such member or by a partner of such firm. Such approval shall be evidenced by endorsement, signed by such member or such partner, including the name of the person who wrote the letter, on an exact copy of such market letter. Such copy so approved shall be made a part of the permanent records of such member or firm and shall be retained for at least three years. Any communication containing forecasts of business or market, financial or other general information, or containing advertising matter, or matter intended to stimulate interest in particular securities, or in the market, provided the same consists of any printed, mimeographed, or written circular, letter or communication, of which a number of identical copies are used or published, or of a telegraphic or other wire communication, transmitted to or published, or otherwise communicated to a number of persons who are not specifically named therein, shall, for the purpose of this section, be deemed a market letter.

See Section 8 of Chapter XIII regarding advertising by radio.
†Adopted June 26, 1930.

[The next page is C—105]

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON

September 28, 1934

New York Stock Exchange,
New York, N. Y.

Gentlemen:

Enclosed you will find a copy of an order of the Commission registering the New York Stock Exchange as a national securities exchange.

Very truly yours,
JOHN J. BURNS
General Counsel

- - - - - - -

THE SECURITIES AND EXCHANGE COMMISSION
Washington, D. C.

The NEW YORK STOCK EXCHANGE having applied to the Commission for registration as a national securities exchange, pursuant to Section 6 of Title I of the Securities Exchange Act of 1934, and it appearing to the Commission upon such examination as, under the limitations of time, the Commission has had opportunity to make of the evidence now before it, that said exchange is so organized as to be able to comply with the provisions of said title and the rules and regulations thereunder and that the rules of said exchange are just and adequate to insure fair dealing and to protect investors, as indicated in Section 6(d) of said Title, and it further appearing that the above exchange has agreed in accordance with Section 6(a) (1) to comply and to enforce so far as is within its powers, compliance by its members with provisions of the Act and any amendments thereto and any rule or regulation made or to be made thereunder, and it further appearing that the said exchange by its rules provides for the expulsion, suspension, or disciplining of a member for conduct or proceeding inconsistent with just and equitable principles of trade, and declares that the wilful violation of any provisions of the Act, or of any rule or regulation thereunder shall be considered conduct inconsistent with just and equitable principles of trade, and, under Section 19 and other sections of said Act, the Commission having powers to alter or supplement the rules of exchanges, it is hereby

ORDERED that said exchange be and hereby is registered as a national securities exchange, such registration to be effective October 1, 1934.

If it appears at any time to the Commission, either upon a hearing on such question at which any interested party may appear, or otherwise, that said exchange in any respect is not so organized as to be able to comply with said title and said rules and regulations, or that the rules of said exchange in any respect are not just and adequate to insure fair dealing and to protect investors this registration shall in no wise preclude the Commission from so finding and revoking this registration or taking such other action as it deems appropriate pursuant to Section 19 or any other appropriate provision of said title.

SECURITIES AND EXCHANGE COMMISSION

BY F. P. Brassor
Secretary

Date Sept. 28, 1934

3

For IMMEDIATE Release Monday, April 14, 1958

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

Securities Exchange Act of 1934
Release No. 5670

The Securities and Exchange Commission has announced that it has directed its staff to conduct a study of the commission rates to be charged by members and member firms of the New York Stock Exchange under a recent amendment of its constitution to be effective May 1, 1958, and to report to the Commission whether such commission rates and other charges appear to be reasonable and in accordance with the standards contemplated by applicable provisions of the Securities Exchange Act of 1934.

Section 19(b) of the Securities Exchange Act of 1934 imposes on the Commission certain responsibilities and duties with respect to the rules of national securities exchanges, including rules in respect of such matters as the fixing of reasonable rates of commission and other charges.

Chairman Edward N. Gadsby made the following comment with respect to the Commission's study:

> "Our study of the Exchange's commission rates should not be taken as an indication that the Commission believes the Exchange's recently-adopted increase in commission rates may be improper or unjustified. A determination as to whether or not the Exchange's commission rates are reasonable can only be made upon the basis of a thorough review and analysis of all pertinent facts. To aid the Commission in its consideration of this question, we have instructed our Staff to conduct a study for the purpose of developing the factual data upon which a fair appraisal may be made of the Exchange's rate structure."

---oooOooo---

U 204

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON 25, D. C.

/ISION OF
AND EXCHANGES

January 28, 1959

Mr. Edward C. Gray
Executive Vice President
New York Stock Exchange
11 Wall Street
New York 5, N. Y.

Dear Mr. Gray:

In accordance with our discussions on January 27, 1959, attached herewith is a release which would be issued by the Commission in substantially this form if the Board of Governors of the Exchange should approve the staff proposals relating to commission rates. You will note that a percentage figure is omitted from the second sentence of the next to the last paragraph of the release. The precise percentage figure would depend upon the commission rate schedule approved by the Board of Governors.

In order to insure that there is complete understanding as to the proposals which are being considered by the Special Committee on Member Firm Costs and Revenues I think it important to specifically enumerate them:

1. A proposed Exchange rule substantially in the form of the Exchange draft dated December 31, 1958. I understand that at the suggestion of the staff of the Commission the Special Committee will give consideration to amending that rule to provide that, in addition to proposed amendments to Article XV of the Exchange Constitution relating to rates of commission, the rule would cover proposed rules under Section 9 of Article XV relating to service charges.

2. A proposed letter from Keith Funston, President of the Exchange, to Philip A. Loomis, Jr., Director of the Division of Trading and Exchanges, substantially in the form of the draft letter submitted to you on January 27, 1959.

3. A proposed amendment to Article XV of the Exchange Constitution providing for a new commission rate schedule substantially along the lines of one of the SEC Suggested Schedules A, B or C presented to you on January 27, 1959. I understand that you will advise us of the precise schedule which is to be considered by the Special Committee as meeting the objections made by the staff.

Mr. Edward C. Gray

4. A proposed amendment to Article XV providing for the elimination of the "round turn" commission rate on transactions.

5. An agreement to prepare an outline for a cost study in consultation with the staff of the Commission which study would be made by experts employed for that purpose by the Exchange.

6. A reexamination by the Special Committee on Member Firm Costs and Revenues of the use of the round lot as the basis for the rate structure.

7. An undertaking by the Exchange to consult with the staff of the Commission for the purpose of developing and refining the income and expense survey of member firms as a source of data in connection with commission rates.

If the Special Committee determines not to recommend the staff proposals to the Board of Governors, I would appreciate being advised as soon as possible. If both the Special Committee and the Board of Governors accept the staff proposals and the two amendments to the Exchange Constitution are submitted to the membership, I should point out that in the event that the Exchange membership does not approve the proposed changes in the rate schedule the position of the Commission and the action it might take would be substantially the same as if the staff proposals had not been approved by the Board of Governors.

Very truly yours,

Philip A. Loomis, Jr.
Director

Enclosure:
Release

DRAFT

For IMMEDIATE RELEASE

SECURITIES AND EXCHANGE COMMISSION
Washington 25, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No.

The Securities and Exchange Commission announced today that its staff had completed a study of commission rates charged by members of the New York Stock Exchange as a result of an increase in commission rates adopted by the Exchange on May 1, 1958.

The study, announced in Securities Exchange Act Release No. 5678, dated April 14, 1958, was made in view of the responsibilities and duties imposed upon the Commission by Section 19(b) of the Securities Exchange Act of 1934 with respect to the rules of national securities exchanges, including rules relating to the fixing of commission rates.

The conclusions reached by the staff were the subject of extensive discussions with the Exchange following which the Exchange is taking various steps conforming to the suggestions of the staff.

The steps to be taken fall into three general areas: first, the giving of greater advance notice to the Commission and to the public concerning proposed changes in commission rates and other charges; secondly, the initiation of certain studies by the Exchange in collaboration with the Commission in respect to the rate structure and the development and presentation of information concerning the costs incurred by member firms in the securities commission business; and thirdly, the making of certain reductions in commission rates for small value transactions together with the elimination of the so-called "round-turn" commission rate.

With respect to advance notice, the Exchange has amended its rules to provide a public announcement of any proposal to change commission rates or other charges 30 days in advance of action by the Board of Governors of the Exchange. The Exchange has also given assurances that it will keep the Commission advised of any steps taken by the Exchange looking towards such change.

An Exchange committee will reexamine the use of the round-lot as the basis for the rate structure as compared with the use of a schedule primarily based upon the amount of money involved in the transaction. The Exchange also proposes to study the possibility of improving its income and expense survey of member firms as a source of data in connection with

commission rates and, in consultation with the staff of the Commission, to prepare an outline of a cost study which would be made by experts employed for that purpose by the Exchange.

With respect to commission rates themselves the Board of Governors of the Exchange has approved a proposed amendment to the commission rate schedule for submission to the membership which would reduce the commission rate on transactions ranging from $100 to $2,400. The proposed amendment would reduce commissions approximately percent on the average in this area. These modifications were suggested in view of the fact that the May 1958 commission rate increase on transactions between $100 and $2,400 was relatively greater than the increase upon larger transactions. The Board of Governors has also recommended to the membership the elimination of the so-called "round-turn" commission rate under which a reduced rate is granted to persons whose purchase and sale of the same security is completed within 14 days. It was the view of the staff that a special discount for this type of transaction was not justified and the Exchange felt that it had not achieved its desired objective.

The Exchange cooperated fully with the staff of the Commission in the making of the study and in the subsequent discussions which the Commission believes have been and will be productive of results in keeping with the objectives of the statute.

For IMMEDIATE Release Friday, February 20, 1959

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C.

Securities Exchange Act of 1934
Release No. 5889

The Securities and Exchange Commission announced today that its staff had completed a study of commission rates charged by members of the New York Stock Exchange as a result of an increase in commission rates adopted by the Exchange on May 1, 1958.

The study, announced in Securities Exchange Act Release No. 5678, dated April 14, 1958, was made in view of the responsibilities and duties imposed upon the Commission by Section 19(b) of the Securities Exchange Act of 1934 with respect to the rules of national securities exchanges, including rules relating to the fixing of commission rates.

After extensive discussions the Exchange is taking steps in line with the suggestions of the Commission.

These steps fall into three general areas. Firstly, the making of certain reductions in commission rates on transactions under $2,400 together with the elimination of the so-called "round-turn" commission rate; secondly, the initiation of further studies by the Exchange in collaboration with the Commission in respect to the rate structure and the development of information concerning the costs incurred by the member firms in the securities commission business; and, thirdly, establishment of revised procedures to provide the Commission and the public with greater advance notice in cases where the Exchange's Board of Governors is to consider proposed changes in commission rates.

With respect to commission rates, the Board of Governors of the Exchange has approved and submitted to the membership an amendment to the commission rate schedule which would reduce the commission rate on transactions ranging from $100 to $2,400. The change would reduce commissions approximately five per cent on the average in this area. These modifications were suggested in view of the fact that the May 1958 percentage increases on transactions from $100 to $2,400 were relatively greater than the average percentage increase. The Board of Governors has also recommended to the membership the elimination of the so-called "round-turn" commission rate under which a reduced rate is granted to persons whose purchase and sale of the same security is completed within 14 days. It was the view of the Commission that

this type of transaction was not entitled to a special discount and the Exchange felt this rate had not achieved its desired objective.

An Exchange committee will further study the use of a so-called volume or block discount for transactions involving multiple round lot units. The Exchange also proposes to study the possibility of further developing its income and expense survey of member firms as a source of data in connection with the commission rates, and to work with the staff of the Commission and consultants employed by the Exchange to prepare an outline for the basis of a cost study to be made by the Exchange.

With respect to the advance notice, the Exchange proposes to amend its rules to provide that any proposed Constitutional amendment to change commission rates or other charges shall be announced 30 days in advance of action by the Board of Governors of the Exchange. Also, the Commission will be advised of any steps taken by the Exchange looking toward changes in commission rates or other charges.

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON 25, D. C.

December 22, 1965

Mr. G. Keith Funston, President
New York Stock Exchange
11 Wall Street
New York, New York 10005

Dear Keith:

Thank you for your letter of November 29 concerning the Exchange commission rate structure and Rule 394. The Commission has given considerable thought to the views of your Committee on Costs and Revenues, as outlined in your letter of November 11, and to the views expressed at your presentation to the Commission on November 24. Furthermore, as you know, the staffs of the Commission and the Exchange have had fruitful discussions of both of these subjects which have been reported to the Commission.

The Commission would like to assist the Exchange and the securities industry in their attempts to revise the commission rate structure in the context of the findings of the Special Study Report and more recent developments in the securities industry. This letter is addressed to four specific matters: (1) the problems created by what you have referred to as "give-ups" and "give aways" of commissions; (2) access to the Exchange by certain non-members having customers orders for execution; (3) volume discounts; and (4) Rule 394.

In seeking to distinguish the "give-up" from the "give away", to use your terms, your Committee is attempting to meet a substantial problem affecting the securities industry today. We do not believe, however, that the solution suggested in your November 11 letter resolves this problem in a thoroughly adequate manner. It is clear from your letter and from subsequent discussions that under your proposal members would continue to share in Exchange commissions as extra compensation for mutual fund sales although it might appear that technically they would provide services to the executing firm in originating or transmitting orders. In reality, however, any services that such firms would perform would seem to be unnecessary for the execution of the order and for the most part would create additional paperwork merely to justify a give-up.

Absent a countervailing showing, it would appear that sharing in commissions, in the sense of providing rewards that are unrelated to the execution of transactions for bona fide customers, is not an appropriate practice. Such arrangements should be distinguished from the situation in which a broker-dealer is selected by his customer to execute an order and from the performance by other broker-dealers of appropriate and valuable services in connection with the transaction. We think that it would be desirable to frame rules dealing with this matter in general terms and then to set forth specific criteria concerning the participation by other brokers in the execution and the commissions. These criteria could include, for example, whether the compensation received by each participating broker bears a reasonable relationship to the services actually performed by him; whether persons paying commissions to a broker are bona fide customers of such broker; whether a customer directs the method or manner of execution and sharing of the commissions and the size of the transactions.

In this connection, the best test of whether a give-up is actually compensation for services connected with a transaction, such as execution or clearance, may be whether the portion of the commission given up bears a reasonable relationship to the intra-member commission rates set out in the Exchange Constitution.

We are generally in accord with the Committee's view that certain nonmember broker-dealers who cause their customers orders to be brought to the floor through a member should be entitled to compensation for their services in connection with the execution of the order by appropriate sharing of the commission. If, however, arrangements are made for such sharing of commissions, they should be so confined that they cannot be used as a vehicle for perpetuating or extending improper give-up practices and consequently the measures discussed above with respect to the splitting of commissions among members should be equally applicable to any sharing of commissions with nonmembers.

Assuming such broker-dealers would be considered "members" under Section 3(a)(3) of the Exchange Act, we think that the Exchange's regulatory role and responsibility for the securities activities of such firms can be satisfactorily resolved. In this connection, we think that the solution to this as well as to other problems of overlapping jurisdiction may be found in coordination of activities and responsibilities among the self-regulatory organizations and this Commission. As you know, the Commission has begun discussions with your Exchange and other agencies with a view to improving coordination of regulatory efforts. The question of the proper regulatory control

Mr. G. Keith Funston Dec. 22, 1965

of nonmember firms that may have access to your Exchange can be included in these discussions. After a determination has been made as to the specific arrangements for such sharing of commissions, the Commission would be disposed to adopt an appropriate rule which would provide the necessary protections with respect to Section 3(a)(3).

We agree with what we understand to be the view of the Committee that a volume discount is necessary and appropriate and that steps are being taken to devise a workable arrangement. We are fully aware of the mechanical problems inherent in the institution of a volume discount, particularly as it relates to the division of commissions on blocks, a portion of which may be executed by one or more different brokers or on one or more regional exchanges. We believe, however, that a satisfactory solution can be found.

With regard to Rule 394, I am enclosing herewith the conclusions and recommendations arrived at by the staff of the Commission in their study of this subject. We understand that you have had a thorough discussion with our staff of the underlying materials which form the basis for such conclusions and recommendations. The Commission believes the recommendations of the staff have considerable merit, and that they derive support from the record of the inquiry. We have carefully considered the Exchange's position as presented during our inquiry concerning this matter and at our meeting of November 24. We believe that it is incumbent on the Exchange to consider the approach suggested or offer alternative answers or solutions to meet and resolve the problems raised.

We recognize that the problems raised by the Exchange commission rate structure and Rule 394 are complex and far-reaching. We would expect to provide assistance to you in working out the details within the guidelines set forth and our staff is prepared to meet with you to discuss these matters. If you believe that any of the above suggestions or comments are inappropriate we, of course, would be pleased to receive any factual commentary which you believe would aid the Commission in its evaluation of these matters.

As you know, these matters have been considered by the Exchange and the Commission for many months and though we expect that their ultimate implementation may require our communication with other self-regulatory institutions and other affected parties, we hope that these matters can be moved forward to their resolution within a reasonably short period of time.

Sincerely,

Manuel F. Cohen

Manuel F. Cohen
Chairman

Enclosure

NEW YORK STOCK EXCHANGE

ELEVEN WALL STREET

NEW YORK, N. Y. 10005

ROBERT W HAACK
PRESIDENT

January 2, 1968

TO: Members and Allied Members

SUBJECT: Commission Rate Structure Proposal

A principal unsolved problem facing the securities industry is that involving the New York Stock Exchange commission rate structure. The complexities and ramifications are such that they are not generally understood even though they directly or indirectly affect the New York Stock Exchange and its members, regional exchanges and their members, the third market, non-member broker-dealers, institutional investors and, of course, the public.

The problem has become more acute by reason of certain pressures which are building up in Congress, government agencies and departments, a segment of the press and the SEC which has oversight responsibilities in the area. The issue is further complicated by the fact that the Exchange, enjoying the privilege of self-regulation and operating under a government approved commission rate structure and certain anti-trust immunities, has an obligation to review its fees and industry developments and practices in the light of public interest. This is a problem which cannot be solved by the Exchange alone. However, inaction on our part is apt to result in the problem being solved by those outside the industry who may be less familiar with the ramifications and as a result might direct changes less satisfactory than those we initiate.

The minimum commission rate is ceasing to be a "minimum" because of practices which have developed and which are proliferating. This is the case in large measure because certain institutional investors are naturally desirous of achieving a lower commission rate on large transactions, and brokers who are non-members of this Exchange are understandably interested in achieving access to the commission dollar. To accomplish these objectives, among others, a wide range of devices is being employed. Membership on regional stock exchanges, used in both simple and complex reciprocal arrangements related to NYSE transactions, has resulted in a practical access to the New York Stock Exchange. Other practices have in effect given certain institutions commission discounts. One exchange, by permitting rebates to SECO members, in effect is giving a public and institutional discount. Through complicated arrangements there are now certain sophisticated individuals who manage to receive 40% rebates on their listed transactions. The net result,

brief, is an intricate maze involving give-ups, give-aways, reciprocal practices, manufactured participations in trades, transported trades moved from one Exchange to another, all of which result in a leakage of the commission dollar.

The situation also reflects a commission structure which was most recently revised in 1959 and which does not properly recognize significant changes which have since taken place in the mix of our business. We are all aware of the increased institutional activity which is one of the significant phenomena of our time and which in all likelihood will continue to grow. It seems reasonable that institutional business with its unique characteristics and demands must be recognized in our commission charges. Moreover, failure to recognize and speak to the problem will inevitably result in a diversion of activity to competing marketplaces.

Because of all of the foregoing, the Board of Governors has unanimously adopted a resolution which had earlier been recommended by the Cost and Revenue Committee and which has the further approval of the Regional Firms Advisory Committee and the Liaison Committee of the Association of Stock Exchange Firms to the effect that the New York Stock Exchange proposes to

(1) incorporate a volume discount in the minimum commission schedule, the amount and nature of such discount to be subsequently determined.

(2) support continuation of the practice of customer directed give-ups on their own transactions with a limitation on the percentage amount which may be so given-up.

(3) take steps to prohibit reciprocal practices which result in de facto rebates of NYSE commissions even where those arrangements involve other markets than the NYSE floor, provided that the SEC will aid in prohibiting such practices in other markets.

(4) allow a discount in the minimum commission schedule for non-member brokers, both domestic and foreign, with qualifications to be specifically defined subsequently.

(5) at the order of the SEC to this and other registered exchanges, adopt rules limiting membership and broker-dealer allowances to bona fide broker-dealers.

Because of the interrelationship of these proposals these courses of action are offered as a package. Further, the specific details of each of the five elements of the package will have to be developed subsequently.

The first proposal described would give directly to large investors, principally institutions, and to the public which has entrusted its funds to institutions, a commission reduction to which they are entitled by size of transaction and which some are presently receiving circuitously.

Continuance of customer directed give-ups on a reduced and controlled basis would tend to eliminate abuse in granting of reciprocals, and would give recognition to the fact that there is more to an order than its execution.

The third proposal, involving an enforcement of rebate rules, would help to eliminate undesirable reciprocal practices and arrangements engaged in by some which through certain other exchanges and the over-the-counter market, result in NYSE commission "leakage".

Because we recognize and respect the desire of non-NYSE brokers to merchandise securities listed on our Exchange profitably, and preferring not to have them compensated by artifice, we propose that certain qualified brokers be given an opportunity to share the commission dollar directly instead of indirectly. The public will be better served and depth and liquidity of markets on our Floor will be improved.

Our last proposal restricting future membership in any exchange to bona fide broker-dealers is necessary to insure the health and vitality of our securities distribution and auction market mechanisms as we know them.

Chairman Gustave Levy and I presented these proposals for consideration by the SEC this morning. I cannot emphasize too strongly the important role that the SEC must play in considering and evaluating the action which has been taken by the Board of Governors.

Subject to Commission reaction, the Cost and Revenue Committee intends to proceed immediately with drafting rules and commission structure to accomplish these ends.

Robert W. Haack

Robert W. Haack,
President

FOR RELEASE Friday, January 26, 1968

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

Securities Exchange Act of 1934
Release No. 8239

The Securities and Exchange Commission announced that the New York Stock Exchange has submitted for Commission comment and reaction the outlines of a proposal for certain revisions of its commission rate structure. A copy of that proposal is attached to this release. As described more fully below, the Exchange proposal generally contemplates (1) provision for a volume discount in commissions, (2) access to the exchange market for qualified nonmember broker-dealers through a professional discount, (3) recognition of limited customer directed "give-ups" of commissions to both members and nonmembers on New York Stock Exchange executions and limitations upon reciprocal business, (4) a prohibition of procedures by which institutional investors may recapture a portion of the commissions paid by them and (5) a requirement that the regional exchanges impose similar restrictions.

The Commission also announced that it has under consideration a proposal to adopt Rule 10b-10 under the Securities Exchange Act of 1934. The rule, essentially, would prohibit investment company managers from directing brokers executing transactions for an investment company to divide their compensation in any way with other brokers unless the benefits of such division accrue to the investment company and its shareholders. The rule would be adopted pursuant to the antifraud provisions of the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940 and certain provisions of the Investment Company Act of 1940.

Since the proposal of the Exchange as well as the proposed Commission rule would have significant impact upon New York Stock Exchange member firms, nonmember broker-dealers, institutional investors, other exchanges and the public, the Commission believes it appropriate that all interested persons have an opportunity to comment not only on the proposed Commission rule but also on the Exchange's proposal.

Both the proposed Commission rule and the proposal of the Exchange arise out of certain problems presented by the great increase in institutional investment and the complex and rapidly developing pattern of practices and procedures in the securities markets associated with that increase which are commonly referred to as "give-ups and reciprocal business." Proposed Rule 10b-10 is limited in scope. It assumes that present give-up practices will continue and accordingly deals primarily with the question of conduct by fiduciaries in that context. The New York Stock Exchange proposal is more far reaching and, particularly insofar as it involves a volume discount, suggests the possibility that the problem with which the proposed rule is concerned could be dealt with in a more direct and thorough-going way by changing the commission rate structure. For this reason and because in certain respects the proposed rule of the Commission and the Exchange proposal are inconsistent, the Commission further believes it appropriate to afford interested persons the opportunity not only to comment with respect to both the proposed rule and the Exchange proposal but to suggest, if they so desire, alternative means of dealing with the serious and difficult problems presented.

Any consideration, both of these proposals and of the practices and procedures to which they relate, must include careful attention to their impact upon competition, including competition among securities firms, competition among markets and competition among institutional investors. This is mandated by the antitrust laws and the policies underlying these laws. As the Supreme Court has pointed out, the Exchange commission rate structure includes a number of practices which would clearly violate the antitrust laws absent the Securities Exchange Act and notwithstanding the Securities Exchange Act the exchanges do not enjoy a blanket exemption from the antitrust laws. Nevertheless where the Commission has jurisdiction to review and pass upon particular Exchange activities, as it has in the area of commission rates under Section 19(b) of the Exchange Act, antitrust immunity may, under some circumstances,

be implied. 1/ Such immunity would be implied to the extent necessary to reconcile the statutory scheme of the Securities Exchange Act with that of the antitrust laws. This necessarily contemplates that full consideration be given to the policies of the antitrust laws as well as those of the Securities Exchange Act in evaluating any aspect of the commission rate structure or any proposals for its revision. Whether or not the mere existence of Commission jurisdiction necessarily creates an immunity from the antitrust laws was left open by the Supreme Court in the Silver case. However this may be, it is clear that antitrust considerations should receive the closest scrutiny.

BACKGROUND

The Commission believes it useful to outline briefly the situation which prompted both the New York Stock Exchange's rate structure proposal and proposed Commission Rule 10b-10 with the expectation that this may contribute to understanding and analysis of these proposals.

In recent years institutional investors, including banks, insurance companies, pension plans and investment companies have accounted for a steadily increasing share of the volume of trading on the exchanges. On the New York Stock Exchange institutional volume as a percent of total public volume has increased from 25.4 percent in March 1956 to 33.8 percent in September 1961, to 39.3 percent in March 1965 and 42.9 percent in October 1966, the latest date available. It should be recognized that these institutional investors usually represent a pooling, under professional management, of savings belonging to a great many individuals, most of whom are small investors. Consequently securities market conditions and practices which affect the investments of these individuals are of wide public interest.

These institutions tend to deal in larger blocks of securities than individual investors ordinarily do. Consequently increasing institutional participation in the exchange markets has been accompanied by a significant increase in the number of large blocks offered and traded. Studies by the New York Stock Exchange show that the number of transactions involving 10,000 shares or more has increased from 2171 in 1965 to 6685 in 1967, that the number of shares involved in these transactions has more than tripled, and that their share of reported volume has increased from 3.1 percent to 6.5 percent.

This situation has thrown an increasing strain on the rigid minimum commission rate structure, adopted many years ago by the New York Stock Exchange and followed by all other national securities exchanges, which is based upon a single round lot, usually 100 shares. There is no volume discount based either on the size of the individual order or upon the amount of portfolio business done by an institution or upon the amount of portfolio business done by an institutional investor over a period of time. Thus the commission which a member firm is required by Exchange rules to charge its customer on a 10,000 share transaction is 100 times the commission it is required to charge on a 100 share transaction and the commission on 100,000 shares is 1000 times the commission on 100 shares. Ostensibly all persons who are not Exchange members must pay the minimum commission. There is no distinction among different kinds of nonmember, e.g., nonmember brokers, individual customers, institutional investors, etc.

While orders to buy or sell large blocks involve greater demands on a broker than the execution of a single round lot order, it does not cost a broker anywhere near 100 times as much to execute a 10,000 share order than to execute a 100 share order. Indeed, for certain aspects of the execution process, such as bookkeeping, the cost is essentially the same. As is true in other areas of the business world, broker-dealers engaged in effecting such transactions have enjoyed the great advantages of scale accruing from large transactions. These institutional transactions generally do not involve the payment of a commission to a salesman of the broker, although an institutional brokerage business usually does entail the expense of maintaining an

---

1/ Silver v. New York Stock Exchange, 373 U.S. 341 (1963). See also Kaplan v. Lehman Bros., et al., 250 F. Supp. 562 (N.D. Ill., 1966), aff'd 371 F. 2d 409 (C.A. 7, 1967), certiorari denied, ___ U.S. ___, the Chief Justice dissenting, (1967).

institutional trading department and the development of special talents. Consequently, the executing brokers are willing to accept substantially less compensation for executing institutional orders, particularly large institutional orders, than is contemplated by mechanical application of the existing minimum commission rate rules of the exchanges.

Managers of institutional investors have taken advantage of the competition among brokers for institutional business, and the willingness of such brokers to accept compensation far lower than that contemplated by the Exchange rules, to divert or recapture portions of the commission paid on institutional orders. An increasingly complex pattern of practices having this objective has developed. Many of these practices involve the so-called "give-up."

A "give-up" is a payment by the executing broker to other broker-dealers of a part of the minimum commission he is required to charge his customers. Under the rules of the stock exchanges, the payment may be made on the executing broker's own initiative and for his own purposes or it may be directed by the customer. The recipient of a "give-up" check may have had nothing whatsoever to do with the transaction for which the commission is charged and in fact may not even know of the transaction or where or when it was executed. Thus "give-ups" have been widely used in connection with mutual fund portfolio transactions. Managers of mutual funds direct give-ups, for the most part to broker-dealers who have sold fund shares in order to motivate, or reward, such sales effort. On certain orders, the executing broker may retain as little as 25 percent of the commission paid by the fund and give up the balance. Brokers who sell fund shares are thus compensated for their efforts not only by receipt of the dealer's portion of the "sales load" but also by substantial amounts of give-up dollars generated at the direction of the manager of the fund through purchases and sales of fund portfolio securities. Fund managers also often use give-ups as a reward for research ideas furnished to them in their capacity as investment advisers to the funds.

While the New York Stock Exchange permits its members to give up commissions only to other members of that Exchange, the smaller regional exchanges have, with increasing success, competed with the New York Stock Exchange for institutional business, particularly the business of mutual funds, by permitting give-ups of commissions not only to members of the particular exchange but also to any member of the National Association of Securities Dealers, Inc. or even to any registered broker-dealer. By requiring that an order be taken to a regional exchange, a mutual fund manager is able to provide monetary reward to broker-dealers who sell shares of the mutual fund but who are not members of the New York or of any exchange.

Give-ups are widely used in connection with so-called "cross" transactions. These involve situations where the order cannot be adequately executed in the auction process of the floor of an exchange and therefore the institutional broker finds the other side of the trade on the floor, i.e., locates a seller if he has an order to buy or a buyer if he has an order to sell, and then merely records or "crosses" the order on the floor. Exchange rules do not allow member brokers to consummate crosses in their offices or in the over-the-counter market at a negotiated commission, but they do allow the broker to send the transaction to any exchange of which he is a member and to give up from the commissions he must charge on the cross in accordance with the rules of that exchange. By this means large institutional orders can, nominally at least, be executed on small regional exchanges, but where this occurs the usual motive is simply to take advantage of the rules of that exchange with respect to the classes of persons who may receive give-ups.

In addition to the give-up, there have developed complex practices by which executing brokers provide compensation at the direction of institutional investors to other brokers by means of reciprocal business, i.e., permitting such other brokers to participate in the commission generated from execution, in the over-the-counter market or on regional exchanges, of orders which the institutional broker has received from other customers. More recently, certain member firms of the New York Stock Exchange have developed a procedure whereby they can compensate nonmembers of the New York Stock Exchange at the direction of mutual fund managers by paying cash to such nonmembers and crediting such payments on over-the-counter trades for unrelated customers, whether or not commissions were in fact charged on such trades. The compensated dealers have no

participation in these trades and, in fact, may never have heard of the trades at the time when they were executed.

Give-ups and reciprocal business practices in connection with institutional trading have become so widespread that it may plausibly be argued that, in the case of large institutional orders, there is in economic substance no fixed minimum commission. Commissions are negotiated between institutional managers and their "lead" brokers with the lead broker on occasion retaining no more than 25 percent of the ostensible minimum commission. This situation is perhaps most strikingly illustrated by procedures which have been developed and which enable institutional investors to recapture a portion of commissions for themselves. Many mutual fund managers have affiliates which are registered as broker-dealers; many of these affiliates are members of the NASD. A small number of mutual fund managers have created affiliates which have joined a regional stock exchange. In the latter situations, the manager directs that give-ups and reciprocal business be given by its lead brokers to its affiliates. It then credits the net income thus received by the affiliate, in whole or in part, against the advisory fee it receives from the fund. This results in lowering the advisory fee by all or part of the net income the manager has thus obtained. Through this means, public shareholders of institutions can, within the framework of existing practices developed by the securities industry, recoup substantial amounts of commissions actually paid for the execution of their portfolio orders despite a rigid commission structure which does not otherwise permit the institution to benefit from the very substantial portfolio business it may have to dispense. In one instance the advisory fees charged to a large complex of mutual funds by their common manager were lowered in the aggregate by approximately $3.1 million for the year 1966, this sum being the approximate net profit of the manager's broker-dealer affiliate. Other managers have elected to credit the advisory fees they charge by only 50 percent of the net profits of their broker-dealer affiliates. In a few instances, the mutual fund manager has kept all give-ups it has directed to its brokerage affiliate for itself without lowering the advisory fees it charges to the fund whose portfolio transactions are the source of such give-ups.

Although these techniques permit fiduciaries who manage a pooled fund to return a portion of portfolio commissions to the shareholders of that fund, they have to date been employed mainly by the managers of those mutual funds whose shares are sold by the manager's own "captive" sales force. Managers of those mutual funds which are distributed by independent broker-dealers have almost always used the excess brokerage to provide additional reward to dealers who sell shares of the fund rather than endeavoring to recapture such brokerage for the fund. This is because by so compensating dealers these mutual fund managers facilitate the sale of shares and thus maximize their own underwriting and investment advisory income. Many mutual fund managers believe that so long as this type of sales incentive can be given to dealers, competition among mutual fund managers for the favor of dealers will make it difficult, if not impossible, for any individual fund manager to fail to provide such compensation to dealers, both members and nonmembers of exchanges, selling shares of his funds. In this connection the Commission has been informed that certain large member firms of the New York Stock Exchange, who maintain extensive mutual fund departments and are a significant factor in the sale of mutual fund shares through dealers, have suggested to mutual fund managers that brokerage be channeled to them if they are to continue to sell shares of the manager's funds.

The net effect of the foregoing developments have been (1) a dramatic increase in the volume of transactions on regional exchanges, 2/ (2) a "diversion" of commissions which otherwise might have been retained by New York Stock Exchange members to

---

2/ In 1961 the total dollar volume of transactions on regional exchanges was $4.4 billion; in 1966 it was $10.3 billion. This represented 6.8 percent of the dollar volume of transactions on all exchanges in 1961 and 8.4 percent of such volume in 1966. By comparison New York Stock Exchange dollar volume increased from $53.7 billion in 1961 to $98.6 billion in 1966; and New York Stock Exchange transactions declined from 82.6 percent of total dollar volume of exchange transactions in 1961 to 80.1 percent of such transactions in 1966. Dollar volume on the American Stock Exchange accounts for the balance. Substantially all of the regional exchange volume consists of trading in securities also traded on the New York Stock Exchange.

(a) other members who perform no function in connection with transactions and (b) nonmembers of the New York Stock Exchange who perform no function on transactions effected by New York Stock Exchange members on regional exchanges, and (3) a developing trend whereby excess commissions—the amounts which, at the direction of institutional managers, executing brokers are willing to give up to persons who perform no service or function in connection with the execution of portfolio transactions—are returned, at least partially, to the institutional customers thereby indirectly benefiting the millions of investors who invest through pooled media such as mutual funds. In short, competition in the securities industry between institutional managers and brokers and between exchanges, has operated to reduce very substantially the amount of commissions actually retained by executing brokers—but with relatively little impact or effect as yet on the commissions actually paid by the public investors who invest through institutional media.

In addition to practices with respect to commissions on institutional transactions, there are certain related competitive phenomena which deserve mention. As previously noted, the New York Stock Exchange rate structure expressly provides that nonmembers of that Exchange—including broker-dealers who are members of a regional exchange—must pay a New York Stock Exchange member a full commission for transactions executed on the New York Stock Exchange. Nevertheless, reciprocal business practices have developed which now give such regional exchange members indirect economic access to the floor of that Exchange.

For example, when a broker-dealer cannot execute its customer's order on the regional exchange of which it is a member, it has the order executed on the New York Stock Exchange, pays a New York Stock Exchange member a full New York Stock Exchange commission and collects that amount from the customer. Thus, the sole member of the regional exchange receives no direct compensation for its customer's order. However, it can receive indirect compensation equal to 50 percent of the commission paid by the customer. The member of the New York Stock Exchange through whom the order was executed brings its own customers' orders to the regional exchange, executes them there and names the sole member broker-dealer as the "clearing agent." Typically, under the rules of regional exchanges, the sole member may receive up to 50 percent of the stock exchange commission for acting as "clearing agent" on such orders, although he performs no function except the largely unnecessary one of guaranteeing performance by the New York Stock Exchange member.

Recent years have also seen a substantial growth in the so-called third market. This involves securities firms which are not members of any exchange and which deal in listed securities over-the-counter, both as principal and as agent, largely for institutional customers and broker-dealers not members of an exchange. Since exchange minimum commission rates do not apply to them, they have been able to execute orders either as principal or as agent for compensation substantially less than that provided for in the minimum commission rate rules. On the other hand, their ability to compete for institutional business has been adversely influenced by the fact that they are not in a position to provide give-ups for the benefit of institutional managers, since give-ups have generally been regarded as proper only where a minimum commission rate is applicable. Two incidents illustrate this point. One firm at one time specialized in executing institutional orders for listed securities in the over-the-counter market at a negotiated commission lower than that provided by exchange rules. Certain mutual fund managers suggested that it join a regional exchange and thus charge the higher commissions specified by the exchange and, at the same time, place itself in a position to distribute give-ups at the request of these managers and it did so in order to retain their business. Another large over-the-counter firm advised the Commission that instead of negotiating its compensation on each large institutional trade, it proposed unilaterally to establish a fixed non-negotiable commission but to give up a portion of this commission at the direction of mutual fund managers. This arrangement, which has not yet been put into effect, was motivated not because the firm thought that its existing negotiated compensation was inadequate but, rather, because it believed that its ability to provide give-ups would substantially improve its competitive position in seeking business from mutual fund managers even though its regular charges imposed on the funds were already lower than the New York Stock Exchange fixed minimum commission.

The Commission's jurisdiction under Section 19(b) of the Securities Exchange Act over Exchange rules with respect to "the fixing of reasonable rates of commission"

obviously extends both to the commission rate level and to the commission rate structure. Particularly in the earlier years the Commission's attention appeared to focus primarily on questions of level, although questions of structure also arose. The history of this consideration since 1937 is outlined in considerable detail in the Report of the Special Study of Securities Markets. 3/ As there pointed out, determination of a reasonable level of minimum rates for an industry as diverse, complex and, in a sense, competitive as the New York Stock Exchange brokerage community presents perplexing problems. In addition, questions of structure and questions of level are intimately related. Thus the Exchange proposal for a volume discount pertains to rate level as well as structure and is a response to the fact that the existing level of rates for large institutional transactions has, as a result of competitive factors, fostered the proliferation of give-ups and reciprocal practices.

These practices and problems, as outlined above, some of which are of relatively recent origin, have been the subject of intensive consideration by the Commission over a period of years. Reciprocal business practices and customer directed give-ups were described in the Report of the Special Study of Securities Markets. 4/ It was suggested that they be studied in connection with an intensive inquiry into all aspects of the commission rate structure. They were further discussed in the Commission's 1966 Report on the Public Policy Implications of Investment Company Growth. 5/ Approximately 19 months ago the Commission advised the exchanges of its belief that Exchange rules should be changed to preclude customer directed give-ups. 6/

Since consideration of the New York Stock Exchange proposal necessarily would involve an understanding and consideration of possible alternatives, the Commission believes that proposed Rule 10b-10 should now be noticed for comment. The Commission would thus be in the best position to consider all alternatives, including any which may be suggested.

THE EXCHANGE PROPOSAL

The first item of the New York Stock Exchange proposal involves the establishment of a volume discount. The Exchange has not yet determined the amount of such discount or the circumstances under which it would be available. There are a number of possible alternatives, including (1) a discount based upon the size of a particular order and (2) a discount based upon the volume of a particular investor's transactions over a specified period of time. The Commission assumes that the discount ultimately arrived at would be meaningful and workable. Upon that assumption it would appear that this part of the Exchange proposal would make an important contribution to resolving the problems discussed above and be in accord with suggestions that the Commission has made to the exchanges on several occasions.

Several other parts of the Exchange proposal appear to be based on the view that (1) the relatively untrammeled development of reciprocal and give-up practices, (2) the competitive advantages which regional exchanges have sought in competing for institutional business by increased liberality with respect to give-ups, and (3) the resulting "leakage" of commissions outside the New York Stock Exchange community, as threatening impairment of the depth and liquidity of the New York Stock Exchange market as well as the profitability and financial stability of member firms.

The Exchange proposal seeks to relieve this situation by (1) limiting to the

---

3/ Special Study, Pt. 2, 328-346. H.R. Doc. No. 95, 88th Cong., 1st Sess. (1963).

4/ Special Study, *supra*, 301, 318.

5/ Mutual Fund Report, Chapter 4, pp. 162-188.

6/ Mutual Fund Report, Chapter 4, pp. 185-186.

extent possible the major types of reciprocal business, (2) specifying the maximum percentages of the commission dollar which may be given away in any manner or, alternatively, specifying the minimum amount which must be retained, (3) preventing the regional exchanges from offering different and more liberal give-up arrangements so that institutional or other investors will not seek to execute or cross their transactions on regional exchanges in order to obtain more favorable give-ups, and (4) preventing what is some times referred to as "institutional membership" on exchanges, which appears to include membership of affiliates of an institutional investor whose function is to receive give-ups and reciprocal business and in whole or in part to pass the income therefrom back to the institutional investor itself. This is a significant part of the New York Stock Exchange proposal which would have a particularly important effect upon the securities markets, and would require action by the Commission. Consequently, comment with respect to it would be appreciated. These aspects of the Exchange's proposal may be viewed together as designed to make its minimum commission rates effective and enforceable insofar as large institutional transactions are concerned.

It would appear that the New York Stock Exchange proposal could have a substantial impact on the regional exchanges. A primary method by which regional exchanges have competed for the portfolio business of institutions has been to offer institutional managers a more flexible rate structure than that of the New York Stock Exchange, i.e., by permitting give-ups to a wider category of persons. Regional exchanges rely heavily on reciprocal business patterns which permit their sole members (nonmembers of the New York Stock Exchange) to obtain indirect access to the New York Stock Exchange. In this connection regional exchange rules facilitate reciprocal business practices by which dual members (members of the New York Stock Exchange and a regional exchange) compensate members of regional exchanges for business executed on the New York Stock Exchange. The New York Stock Exchange proposal would curtail such practices. It also would prevent institutions from obtaining membership on regional exchanges or otherwise engaging in reciprocal business practices which, in effect, reduce the portfolio commissions such institutions pay. Both the impact and the significance of the Exchange proposal, insofar as it involves the regional exchanges, are affected by a change which has taken place in the primary function of the regional exchanges. These exchanges were originally conceived of as primarily providing local markets for local securities. With the passage of time, the emphasis on most of the regional exchanges has shifted to providing a local market for securities traded on the New York Stock Exchange. Technical improvements in communication and the development of over-the-counter markets for local securities have contributed importantly to this change in the nature of the regional exchanges. As pointed out above, in many instances the participation of certain regional exchanges amounts to no more than providing a location where privately negotiated "cross" transactions in New York Stock Exchange listed stocks are recorded and give-ups are distributed.

Finally, the New York Stock Exchange proposal permits the continuation of customer directed give-ups and would expand them to provide for give-ups to nonmember broker-dealers of the New York Stock Exchange on executions on that Exchange. It would also provide for minimum retentions by executing brokers. The justification for these restrictions presumably is that competition in liberality with respect to customer directed give-ups is not a desirable form of competition and that the economic health of the exchange community calls for a sharp and enforceable distinction between public customers and the brokerage industry.

Certain aspects of the New York Stock Exchange proposal are not specific, i.e., the amount, kind, or applicability of the volume discount, the percentage of the minimum commission which a nonmember could receive and the qualifications which nonmembers would have to have in order to become eligible for this "access" and the amount of customer directed give-ups available to members and nonmembers, etc. Further, the Exchange proposal does not indicate whether the Exchange contemplates revision of the commission rate rules to relate commissions more directly to the money involved in a transaction rather than to the number of shares, thus modifying the existing disparity in commissions paid for a given investment in low priced stocks and in high priced stocks. This matter was discussed in a report to the exchange community from Mr. G. Keith Funston, then president of the Exchange, on July 21, 1967. Revisions along

this line, as suggested by Mr. Funston, would not only modify this disparity but might provide a convenient way of introducing the proposed volume discount.

The Exchange apparently is initially concerned with the principles and objectives underlying its proposal. In this connection, the Commission assumes that if these principles and objectives are accepted, the Exchange will determine the specifics, i.e., the dollar amounts, the percentages and the definitions, in such a way that the proposal will accomplish its intended purpose. Thus, for example, nonmembers would be offered a sufficient participation in commissions to induce them to bring their orders to the Exchange. The Commission understands that New York Stock Exchange members would be required to retain approximately 50 percent of the commission on any order with the balance available for customer directed give-ups.

The Commission believes that it is ~~possible and appropriate~~ for interested persons to express their views on the principles underlying the Exchange's proposal and the means by which its objectives may be accomplished even though, in the absence of more specific proposals, it may not be possible to determine the specific financial impact of various parts of the proposal on the earnings of various members and nonmembers or on the amount of commissions which institutional investors would pay.

PROPOSED COMMISSION RULE 10b-10

Proposed Rule 10b-10 represents an approach to the give-up problem which would not require significant change in the existing commission rate structure of exchanges nor require all exchanges to adopt a uniform approach to the question of give-ups and reciprocal business.

The Commission recognizes that the proposed rule is not a substitute for full reexamination of the structure and rates of commissions on the national securities exchanges. The proposed rule was under consideration prior to the announcement of the New York Stock Exchange proposal and has its antecedents in the Commission's Report on Investment Company Growth, which stated at p. 173:

> "It would not be inconsistent with [the] rules [of certain regional stock exchanges] for dealer-distributed funds to direct give-ups to their adviser-underwriters, all of whom are NASD members, for the purpose of applying these give-ups to reduce the advisory fees payable by the fund. 82/
>
> ---
>
> "82/ Alternatively, the fund itself could form a broker-dealer affiliate to which it could direct give-ups. If this course were followed—and no fund now does so—the give-ups would inure to the direct benefit of the fund's shareholders."

The reasoning on which the proposed rule is based is that if, as pointed out above, a mutual fund manager has various means at his disposal to recapture for the benefit of the fund a portion of the commissions paid by the fund, he is under a fiduciary duty to do so. Furthermore, diversion of such commissions to benefit an investment company manager may be viewed as additional compensation to the manager for handling the portfolio transactions of the fund within the meaning of, and in violation of, Section 17(e)(1) of the Investment Company Act. 7/

The proposed rule therefore reflects a duty on the part of mutual fund managers as fiduciaries not to use commissions paid by their beneficiaries for the benefit of the

---

7/ The Commission does not believe that investment company directors may properly view the benefits derived by fund managers from give-ups as simply an additional form of compensation for investment management. Not only may this run afoul of Section 17(e)(1) of the Investment Company Act but the benefits derived by investment company managers from this source cannot be precisely or adequately disclosed in the prospectus, or in the investment advisory contract, as is required by Section 15(a)(1) of the Investment Company Act.

fiduciary when practices, procedures, and rules of the markets in which such fiduciaries act permit their beneficiaries to receive tangible benefits in the form of reduction of the charges now borne by them. The proposed rule is bottomed on the premise that when a fiduciary uses commissions to obtain benefits for himself under these circumstances, his conduct would appear to violate applicable antifraud provisions of the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940 as well as Section 17(e) of the Investment Company Act, particularly in view of the obscure and often devious ways in which this is accomplished. The proposed rule would be adopted pursuant to Sections 10(b) and 15(c)(1) and (2) AND 23(a) of the Securities Exchange Act of 1934, Sections 206(4) and 211(a) of the Investment Advisers Act of 1940 and Sections 17(e) and 38(a) of the Investment Company Act.

The proposed rule would not impair the competition which now exists among brokers and among exchanges for the business of institutional customers by offering these customers substantial savings on commissions. On the contrary, the proposed rule recognizes that, as mentioned above, developments and competitive forces in the securities markets have, as an economic matter, tended to eliminate the existence of a fixed minimum commission rate on institutional orders.

The proposed rule would read as follows:

"Rule 10b-10

"(1) It shall be unlawful for any registered investment company or affiliated person of such registered investment company* to directly or indirectly, to order or request any broker or dealer:

"(a) to pay or arrange for the payment, directly or indirectly, of all or any portion of a commission on any securities transaction to any broker, dealer or any other person <u>unless</u> pursuant to a written contract the full amount of such remittance is required to be paid over to such registered investment company, or fees owed by or charged to such registered investment company are required to be reduced in an amount equal to the remittance;

"(b) to designate or employ any broker or dealer on any transaction to transmit, execute or clear a transaction or to perform any other function for which compensation is required or made <u>unless</u> pursuant to a written contract the full amount of such compensation is required to be paid over to such registered investment company or fees owed by or charged to such registered investment company are required to be reduced in an amount equal to such compensation.

"(2) For the purposes of this rule a person is affiliated with a registered investment company if such person:

"(a) is an officer, director, trustee, employee, investment

* Although the proposed rule is couched only in terms of persons who are affiliates of and fiduciaries to investment companies, the principles which are set forth above may be equally applicable to other managers of pooled funds who act in a fiduciary capacity and who are able to reduce the portfolio commissions of their beneficiaries. To the extent that such managers direct give-ups for their benefit, when they are in a position to utilize them for the benefit of beneficiaries, it would appear that under the Federal Securities Laws or otherwise, this use of give-ups other than for the benefit of these beneficiaries would also constitute an improper practice by such fiduciaries. Accordingly, the Commission believes that it is appropriate to solicit comment on this issue and will consider whether the proposed Rule 10b-10 should be applicable to other fiduciaries who manage pooled funds.

adviser, member of an advisory board, depositor, promoter of or principal underwriter for the registered investment company, or

"(b) directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with the registered investment company, its investment adviser or principal underwriter, or

"(c) directly or indirectly owns, controls, or holds with the power to vote, five per centum or more of the outstanding voting securities of the registered company."

While the New York Stock Exchange proposal and proposed Rule 10b-10 are not mutually exclusive on all points, the New York Stock Exchange proposal is, to a significant extent, an alternative approach. Insofar as the New York Stock Exchange proposal would provide institutional investors with a volume discount while at the same time closing, insofar as possible, the various avenues by which an institutional manager can recoup commissions for the benefit of the fund, it could, depending upon the nature and extent of the volume discount, provide a direct rather than an indirect means by which institutional investors may obtain the benefit of lower charges. To the extent that it would make impossible indirect recoupment of commissions by institutional managers, the question of a fiduciary duty on their part to seek such recoupment would not arise.

All interested persons are invited to submit their views and comments on proposed Rule 10b-10 in writing to the Secretary, Securities and Exchange Commission, at its principal office, 500 North Capitol Street, Washington, D.C. 20549, on or before March 1, 1968. The Commission also invites comments on the New York Stock Exchange proposal which is set forth in the attachment of this release, as well as any alternative suggestions for dealing with the problems presented. Material submitted will be made available for public inspection unless request for confidential treatment is made.

By the Commission.

Orval L. DuBois
Secretary

Attachment

NEW YORK STOCK EXCHANGE
ELEVEN WALL STREET
NEW YORK, N.Y. 10005

ROBERT W. HAACK
PRESIDENT

January 2, 1968

TO: Members and Allied Members

SUBJECT: Commission Rate Structure Proposal

A principal unsolved problem facing the securities industry is that involving the New York Stock Exchange commission rate structure. The complexities and ramifications are such that they are not generally understood even though they directly or indirectly affect the New York Stock Exchange and its members, regional exchanges and their members, the third market, non-member broker-dealers, institutional investors and, of course, the public.

The problem has become more acute by reason of certain pressures which are building up in Congress, government agencies and departments, a segment of the press and the SEC which has oversight responsibilities in the area. The issue is further complicated by the fact that the Exchange, enjoying the privilege of self-regulation and operating under a government approved commission rate structure and certain anti-trust immunities, has an obligation to review its fees and industry developments and practices in the light of public interest. This is a problem which cannot be solved by the Exchange alone. However, inaction on our part is apt to result in the problem being solved by those outside the industry who may be less familiar with the ramifications and as a result might direct changes less satisfactory than those we initiate.

The minimum commission rate is ceasing to be a "minimum" because of practices which have developed and which are proliferating. This is the case in large measure because certain institutional investors are naturally desirous of achieving a lower commission rate on large transactions, and brokers who are non-members of this Exchange are understandably interested in achieving access to the commission dollar. To accomplish these objectives, among others, a wide range of devices is being employed. Membership on regional stock exchanges, used in both simple and complex reciprocal arrangements related to NYSE transactions, has resulted in a practical access to the New York Stock Exchange. Other practices have in effect given certain institutions commission discounts. One exchange, by permitting rebates to SECO members, in effect is giving a public and institutional discount. Through complicated arrangements there are now certain sophisticated individuals who manage to receive 40% rebates on their listed transactions. The net result,

in brief, is an intricate maze involving give-ups, give-aways, reciprocal practices, manufactured participations in trades, transported trades moved from one Exchange to another, all of which result in a leakage of the commission dollar.

The situation also reflects a commission structure which was most recently revised in 1959 and which does not properly recognize significant changes which have since taken place in the mix of our business. We are all aware of the increased institutional activity which is one of the significant phenomena of our time and which in all likelihood will continue to grow. It seems reasonable that institutional business with its unique characteristics and demands must be recognized in our commission charges. Moreover, failure to recognize and speak to the problem will inevitably result in a diversion of activity to competing marketplaces.

Because of all of the foregoing, the Board of Governors has unanimously adopted a resolution which had earlier been recommended by the Cost and Revenue Committee and which has the further approval of the Regional Firms Advisory Committee and the Liaison Committee of the Association of Stock Exchange Firms to the effect that the New York Stock Exchange proposes to

(1) incorporate a volume discount in the minimum commission schedule, the amount and nature of such discount to be subsequently determined.

(2) support continuation of the practice of customer directed give-ups on their own transactions with a limitation on the percentage amount which may be so given-up.

(3) take steps to prohibit reciprocal practices which result in de facto rebates of NYSE commissions even where those arrangements involve other markets than the NYSE floor, provided that the SEC will aid in prohibiting such practices in other markets.

(4) allow a discount in the minimum commission schedule for non-member brokers, both domestic and foreign, with qualifications to be specifically defined subsequently.

(5) at the order of the SEC to this and other registered exchanges, adopt rules limiting membership and broker-dealer allowances to bona fide broker-dealers.

Because of the interrelationship of these proposals these courses of action are offered as a package. Further, the specific details of each of the five elements of the package will have to be developed subsequently.

The first proposal described would give directly to large investors, principally institutions, and to the public which has entrusted its funds to institutions, a commission reduction to which they are entitled by size of transaction and which some are presently receiving circuitously.

Continuance of customer directed give-ups on a reduced and controlled basis would tend to eliminate abuse in granting of reciprocals, and would give recognition to the fact that there is more to an order than its execution.

The third proposal, involving an enforcement of rebate rules, would help to eliminate undesirable reciprocal practices and arrangements engaged in by some which through certain other exchanges and the over-the-counter market, result in NYSE commission "leakage".

Because we recognize and respect the desire of non-NYSE brokers to merchandise securities listed on our Exchange profitably, and preferring not to have them compensated by artifice, we propose that certain qualified brokers be given an opportunity to share the commission dollar directly instead of indirectly. The public will be better served and depth and liquidity of markets on our Floor will be improved.

Our last proposal restricting future membership in any exchange to bona fide broker-dealers is necessary to insure the health and vitality of our securities distribution and auction market mechanisms as we know them.

Chairman Gustave Levy and I presented these proposals for consideration by the SEC this morning. I cannot emphasize too strongly the important role that the SEC must play in considering and evaluating the action which has been taken by the Board of Governors.

Subject to Commission reaction, the Cost and Revenue Committee intends to proceed immediately with drafting rules and commission structure to accomplish these ends.

Robert W. Haack

Robert W. Haack,
President

CHAIRMAN'S OFFICE
MAILED
MAY 28 1968
Hand Delivered by
Signed by:

Mr. Robert W. Haack
President
New York Stock Exchange
Eleven Wall Street
New York, New York 10005

Dear Mr. Haack:

As you are aware, the commission rate structure of national securities exchanges has been the subject of extensive and continuing study by the Commission. It has become apparent in the course of that study that the present minimum rate structure has led to the development of practices designed to avoid the purported restrictions against the negotiation and the reduction of commission rates. We believe it is now generally recognized that changes in the present commission rate structure are required to benefit the investing public.

The Commission will hold public hearings under Section 21(a) of the Securities Exchange Act of 1934 commencing July 1, 1968, on the question of the commission rate structure of national securities exchanges. A copy of the order for public hearings is enclosed. One subject of these hearings will be whether, in view of present practices, a minimum exchange commission rate structure is necessary, and if so to what extent, in order to achieve the objectives of the Securities Exchange Act of 1934.

The Commission hereby makes written request pursuant to Section 19(b) of the Securities Exchange Act that your Exchange effect on its own behalf changes, to become effective on or before September 15, 1968, in its rules, policies and practices in respect of its commission rate by modifying Article XV, Section 2(a)(1) and appropriate other sections of the exchange constitution and rules either (a) in accordance with the revised minimum commission rates as set forth in Attachment A, or alternatively, (b) by eliminating, with respect to orders in excess of $50,000, requirements for minimum rates of commission. You should also implement appropriate reductions in the current intra-member rate for non-executing firms or eliminate requirements for minimum intra-member charges to such non-executing firms

We wish to emphasize that this request is intended as an interim step and that the Commission has reached no definitive conclusion on whether the particular rates described in Exhibit A would reflect the optimum form of rate structure for your exchange or that any schedule of specified rates would provide a complete answer to the problems raised in [illegible] Release No. 8239 and the comments thereon. Additional measures with respect to other matters, including give-ups, are under continuing consideration and will be examined in the course of the hearing commencing July 1, 1968.

The request that your exchange take the foregoing steps is made in the context of the Commission's responsibilities to consider the national policies embodied both in the securities laws and in the antitrust laws. It is based upon the deficiencies in the present exchange rate structure which fails to provide appropriate discounts but permits give-ups directed by institutional managers, with consequent departures from the purported minimum rate structure on an arbitrary and discriminatory basis.

Sincerely,

Manuel F. Cohen
Chairman

Enclosures

For RELEASE Tuesday, May 28, 1968

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Securities Exchange Act of 1934
Release No. 8324

The Securities and Exchange Commission announced that it has issued an order for the institution of an investigation and a public investigatory hearing, pursuant to Section 21(a) of the Securities Exchange Act of 1934 to consider whether any changes should be made in the rules, policies, practices and procedures of registered national securities exchanges respecting commission rate structure.

Information developed by the Commission has led it to conclude that present commission rate structure rules, practices and policies do not, in fact, provide for fixed minimum commission charges on many exchange transactions. As an interim measure the Commission has written a letter to the New York Stock Exchange, pursuant to the provisions of Section 19(b) of the Securities Exchange Act of 1934, specifically requesting it to adopt a revised commission rate schedule which would, among other things, provide for reduced rates for that portion of an order involving round lots in excess of 400 shares or, alternatively, to eliminate requirements for minimum rates of commission for all orders in excess of $50,000. That letter also requests the New York Stock Exchange to implement appropriate reductions in the current intra-member rate for non-executing firms or to eliminate requirements for minimum intra-member charges to such non-executing firms. Letters also have been written to the other registered national securities exchanges suggesting that they consider adopting appropriate interim changes in their rules, practices and policies relating to commission rate structure. These proposed interim changes also will provide a focus for the evidence to be introduced in the public hearing to be held pursuant to Section 21(a).

The Order, a copy of which is attached to this Release, directs that public hearings will be held in Washington, D.C., commencing on July 1, 1968. It describes in general the matters which will be the subject of the investigation and public hearing. The Commission, in a subsequent release, will describe the procedures to be followed with respect to the hearings.

The investigatory hearing is intended to assist the Commission in the discharge of its responsibility under Section 19(b) of the Exchange Act and other provisions of the securities laws. It is not a substitute for, and its pendency will not preclude, more specific procedures to consider or require specific changes in exchange rules and practices either at the instance of the Commission or at the instance of the exchanges on matters set forth in the attached Order.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

May 28, 1968

In the Matter of COMMISSION RATE STRUCTURE OF REGISTERED NATIONAL SECURITIES EXCHANGES	:	ORDER DIRECTING PUBLIC INVESTIGATION AND DESIGNATING OFFICERS TO TAKE TESTIMONY

I.

The Commission, on January 26, 1968, published Securities Exchange Act Release No. 8239 announcing that it had under consideration a proposal to adopt Rule 10B-10 under that Act and that the New York Stock Exchange had submitted for Commission comment and reaction the outline of a proposal for certain revisions of its commission rate structure.

The responses to Release No. 8239 and other information made available to the Commission indicate that the practices, procedures and exchange rules relating to exchange commission rate structures involve a number of matters such as (i) commission rate levels for exchange members (intra-member rates) and for non-members, (ii) the services for which such commission rates pay and the costs allocated thereto, (iii) give-ups and reciprocal practices among different categories of members and non-members, (iv) membership by financial institutions, (v) economic access to exchange markets by non-member broker-dealers, (vi) competition among exchanges and among exchanges and other markets, and (vii) the necessity for restrictions on access of exchange members to the third market.

II.

The Commission deems it necessary and proper to aid in the enforcement of the provisions of the Securities Exchange Act of 1934 and other Acts administered by the Commission and to determine the reasonableness of the commission rate structure of national securities exchanges, that an investigation be made of practices, procedures and rules of registered national securities exchanges for the purposes of protecting investors and for insuring fair dealing in securities traded upon such exchanges and fair administration of such exchanges.

[illegible]

III.

IT IS ORDERED, pursuant to the provisions of Section 21(a) of the Exchange Act, that an investigation be made of the matters referred to in Section I hereof to aid both in the enforcement of the provisions of the Securities Exchange Act and in the prescribing of rules and regulations pursuant to Sections 12(b), 15(b), 17(a), 19(b) and other pertinent provisions of the Exchange Act and other Acts administered by the Commission; and

IT IS FURTHER ORDERED, pursuant to the provisions of Section 22 of the Exchange Act, that a public hearing shall be held as part of this investigation, that the public hearing shall be conducted before the Commission, any member or members thereof, or Roger S. Foster who is hereby named as hearing officer and empowered to administer oaths and affirmations and perform all other duties in connection therewith as prescribed by law, at the hearing which shall commence at 500 North Capitol Street, Washington, D.C., on July 1, 1968; and

IT IS FURTHER ORDERED, pursuant to the provisions of Section 21(b) of the Exchange Act, that for the purpose of such investigation and public hearing held as part of it Irving M. Pollack and Eugene H. Rotberg and each of them, is hereby designated an officer of this Commission and shall conduct the investigation and perform all other duties in connection therewith as prescribed by law.

By the Commission.

Orval L. DuBois
Secretary

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
TRADING AND MARKETS

May 29, 1968

Mr. Robert W. Haack
President
New York Stock Exchange
Eleven Wall Street
New York, N.Y. 10005

Dear Bob:

I am enclosing, for your information, a table which compares the present commission rate structure with a revised rate structure which the Commission requested the New York Stock Exchange to adopt pursuant to Section 19(b) of the Securities Exchange Act of 1934. We will send you more detailed information in the next few days.

If you have any questions, please do not hesitate to call me (Area Code 202 963-5151) or Eugene H. Rotberg (Area Code 202 962-4217).

Sincerely,

Irving M. Pollack
Director

Enclosures

P.S. We also are enclosing some supplemental equivalence tables which further describe the present and proposed rate structure.

PRICE PER SHARE

	$30			$50			$70			$100		
	Present	Proposed	Percent Change	Present	Proposed	Percent Change	Present	Proposed	Percent Change	Present	Proposed	Percent Change
20	$ 11	$ 11	0	$ 15	$ 15	0	$ 19	$ 19	0	$ 25	$ 25	0
50	20	20	0	29.50	29.50	0	34.50	34.50	0	42	42	0
80	29	29	0	37	37	0	42.60	45	+ 5.6	45	57	+26.7
100	34	33	- 3.0	44	43	- 2.3	46	53	+15.2	49	63	+38.8
200	68	66	- 3.0	88	86	- 2.3	92	106	+15.2	98	136	+38.8
300	102	99	- 3.0	132	129	- 2.3	138	159	+15.2	147	204	+38.8
400	136	132	- 3.0	176	172	- 2.3	184	212	+15.2	196	272	+38.8
500	170	149	-12.4	220	199	- 9.6	230	249	+ 8.3	245	324	+32.2
1,000	340	234	-31.2	440	334	-24.1	460	434	- 5.7	490	584	+19.2
2,000	680	404	-40.6	880	604	-31.4	920	804	-12.6	980	1,104	+12.6
5,000	1,700	914	-46.2	2,200	1,414	-35.7	2,300	1,914	-16.8	2,450	2,664	+ 8.7
10,000	3,400	1,764	-48.1	4,400	2,764	-37.2	4,600	3,764	-18.2	4,900	5,264	+ 7.4
20,000	6,800	3,464	-49.1	8,800	5,464	-37.9	9,200	7,454	-18.9	9,800	10,454	+ 6.8
30,000	10,200	5,164	-49.4	13,200	8,164	-38.2	13,800	11,164	-19.1	14,700	15,664	+ 6.6
50,000	17,000	8,564	-49.6	22,000	13,564	-38.4	23,000	18,564	-19.3	24,500	26,064	+ 6.4
[illegible]	34,000	17,064	-49.8	44,000	27,064	-38.5	46,000	37,064	-19.4	49,[illegible]	52,064	+ [illegible].2

EXCHANGE COMMISSIONS UNDER PRESENT AND PROPOSED RATES

$20 Stock

NUMBER OF SHARES	VALUE OF TRADE	PRESENT RATE			PROPOSED RATE			Percent Change Between Present and Proposed Rates
		Amount	As % of Value	Average Commission Per 100 Shares	Amount	As % of Value	Average Commission Per 100 Shares	
100	$ 2,000	$ 27	1.35%	$27	$ 26	1.30%	$26.00	-3.7%
200	4,000	54	1.35	27	52	1.30	26.00	-3.7
300	6,000	81	1.35	27	78	1.30	26.00	-3.7
400	8,000	108	1.35	27	104	1.30	26.00	-3.7
500	10,000	135	1.35	27	116	1.16	23.20	-14.1
1,000	20,000	270	1.35	27	176	0.88	17.60	-34.8
2,000	40,000	540	1.35	27	296	0.74	14.80	-45.2
5,000	100,000	1,350	1.35	27	656	0.66	13.12	-51.4
10,000	200,000	2,700	1.35	27	1,256	0.63	12.56	-53.5
50,000	1,000,000	13,500	1.35	27	6,056	0.61	12.11	-55.1

EXCHANGE COMMISSIONS UNDER PRESENT AND PROPOSED RATES

$40 Stock

		Present Rate			Proposed Rate			
Number of Shares	Value of Trade	Amount	As % of Value	Average Commission Per 100 Shares	Amount	As % of Value	Average Commission Per 100 Shares	% Change Between Present and Proposed Rates
100	$ 4,000	$ 39	0.975%	$39	$ 38	0.95%	$38.00	-2.6%
200	8,000	78	0.975	39	76	0.95	38.00	-2.6
300	12,000	117	0.975	39	114	0.95	38.00	-2.6
400	16,000	156	0.975	39	152	0.95	38.00	-2.6
500	20,000	195	0.975	39	178	0.89	35.60	-8.7
1,000	40,000	390	0.975	39	284	0.71	28.40	-27.2
2,000	80,000	780	0.975	39	504	0.63	25.20	-35.4
5,000	200,000	1,950	0.975	39	1,164	0.58	23.28	-40.3
10,000	400,000	3,900	0.975	39	2,264	0.57	22.64	-41.9
000	2,000,000	19,500	0.975	39	11,064	0.55	22.13	-43.3

EXCHANGE COMMISSIONS UNDER PRESENT AND PROPOSED RATES

$60 Stock

Number of Shares	Value of Trade	Present Rate: Amount	Present Rate: As % of Value	Present Rate: Average Commission Per 100 Shares	Proposed Rate: Amount	Proposed Rate: As % of Value	Proposed Rate: Average Commission Per 100 Shares	Percent Change Between Present and Proposed Rates
100	$ 6,000	$ 45	0.75%	$ 45	$ 48	0.80%	$ 48.00	+6.7
200	12,000	90	0.75	45	96	0.80	48.00	+6.7
300	18,000	135	0.75	45	144	0.80	48.00	+6.7
400	24,000	180	0.75	45	192	0.80	48.00	+6.7
500	30,000	225	0.75	45	224	0.75	44.80	−0.4
1,000	60,000	450	0.75	45	384	0.64	38.40	−14.7
2,000	120,000	900	0.75	45	704	0.59	35.20	−21.8
5,000	300,000	2,250	0.75	45	1,664	0.55	33.28	−26.0
10,000	600,000	4,500	0.75	45	3,264	0.54	32.64	−27.5
[illegible]0,000	3,000,000	22,500	0.75	45	16,064	0.54	32.13	−28.6

EXCHANGE COMMISSIONS UNDER PRESENT AND PROPOSED RATES

Number of Shares	Value of Trade	$80 Stock: Present Rate: Amount	Present Rate: As % of Value	Present Rate: Avr. Comm. Per 100 Shs.	Proposed Rate: Amount	Proposed Rate: As % of Value	Proposed Rate: Avr. Comm. Per 100 Shs.	Percent Change Between Present and Proposed Rates
100	$ 8,000	$ 47	0.59%	$47	$ 58	0.72%	$58.00	+23.4%
200	16,000	94	0.59	47	116	0.72	58.00	+23.4
300	24,000	141	0.59	47	174	0.72	58.00	+23.4
400	32,000	188	0.59	47	232	0.72	58.00	+23.4
500	40,000	235	0.59	47	274	0.68	54.80	+16.6
1,000	80,000	470	0.59	47	484	0.60	48.40	+ 3.0
2,000	160,000	940	0.59	47	904	0.56	45.20	- 3.8
5,000	400,000	2,350	0.59	47	2,164	0.54	43.28	- 7.9
10,000	800,000	4,700	0.59	47	4,264	0.53	42.64	- 9.3
50,000	4,000,000	23,500	0.59	47	21,064	0.53	42.13	-10.4

EXCHANGE COMMISSIONS UNDER PRESENT AND PROPOSED RATES

$100 Stock

Number of Shares	Value of Trade	Present Rate: Amount	Present Rate: As % of Value	Present Rate: Average Commission Per 100 Shares	Proposed Rate: Amount	Proposed Rate: As % of Value	Proposed Rate: Average Commission Per 100 Shares	Percent Change Between Present and Proposed Rates
100	$ 10,000	$ 49	0.49%	$49	$ 68	0.68%	$68.00	+ 38.8
200	20,000	98	0.49	49	136	0.68	68.00	+ 38.8
300	30,000	147	0.49	49	204	0.68	68.00	+ 38.8
400	40,000	196	0.49	49	272	0.68	68.00	+ 38.8
500	50,000	245	0.49	49	324	0.65	64.80	+ 32.2
1,000	100,000	490	0.49	49	584	0.58	58.40	+ 19.2
2,000	200,000	980	0.49	49	1,104	0.55	55.20	+ 12.6
5,000	500,000	2,450	0.49	49	2,664	0.53	53.28	+ 8.7
10,000	1,000,000	4,900	0.49	49	5,264	0.53	52.64	+ 7.4
50,000	5,000,000	24,500	0.49	49	26,064	0.52	52.13	+ 6.4

M. F.:- Commission [illegible]

241 (2) 355

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
TRADING AND MARKETS

May 31, 1968

Mr. Robert W. Haack, President
New York Stock Exchange
Eleven Wall Street
New York, New York 10005

Dear Bob:

Enclosed is another table which compares the present and proposed commission rates as a percentage of various dollar value trades.

Sincerely yours,

Irving M. Pollack
Director

Enclosure

Trade Size
Shares 100-400
Value
$ 30,000
60,000
120,000
360,000
720,000
2,160,000
10,800,000

COMMISSION AS A PERCENT OF VALUE FOR VARIOUS PRICED STOCKS AT
SELECTED ORDER SIZES UNDER PRESENT AND PROPOSED COMMISSION RATES

Trade Size	Commission As Percent of Value Under Present Commission Rates					Commission As Percent Of Value Under Proposed Commission Rates				
	Price Per Share					Price Per Share				
	$10	$20	$30	$60	$100	$10	$20	$30	$60	$100
Shares										
100-400	1.70	1.35	1.13	0.75	0.49	1.60	1.30	1.10	0.80	0.68
Value										
30,000	1.70	1.35	1.13	0.75	0.49	0.93	0.82	0.78	0.75	0.68
60,000	1.70	1.35	1.13	0.75	0.49	0.73	0.73	0.69	0.64	0.63
120,000	1.70	1.35	1.13	0.75	0.49	0.72	0.68	0.62	0.59	0.57
360,000	1.70	1.35	1.13	0.75	0.49	0.705	0.65	0.58	0.55	0.54
720,000	1.70	1.35	1.13	0.75	0.49	0.70	0.64	0.575	0.54	0.53
[illegible],160,000	1.70	1.35	1.13	0.75	0.49	0.70	0.635	0.57	0.54	0.52
[illegible],800,000	1.70	1.35	1.13	0.75	0.49	0.70	0.63	0.57	0.53	0.52

NEW YORK STOCK EXCHANGE
ELEVEN WALL STREET
NEW YORK, N.Y. 10005

[ROB]ERT W. HAACK
PRESIDENT

August 8, 1968

CHAIRMAN'S OFFICE
RECEIVED
AUG 8, 1968
Delivered by hand
SEC. & EXCH. COMM.

The Honorable Manuel F. Cohen, Chairman
Securities and Exchange Commission
500 North Capitol Street, N.W.
Washington, D. C. 20549

Dear Chairman Cohen:

This letter is in reply to your letter of May 28, 1968 in which you requested pursuant to section 19(b) of the Securities Exchange Act that the New York Stock Exchange effect interim changes on or before September 15, 1968 in its minimum rates of commission either (a) in accordance with the revised minimum commission rate schedule attached to the letter, or (b) by eliminating minimum rates of commission with respect to orders in excess of $50,000.

On June 27, 1968, the Board of Governors of the Exchange approved in principle a volume discount, a step-by-step abolition of customer-directed give-ups and a one-third discount to qualified non-member brokers. On August 7, 1968, the Board further considered these questions and now proposes a specific interim non-member commission schedule embodying a reduced rate for volume orders, specific interim intra-member commission schedules embodying across the board reductions, additional language to the Exchange Constitution which would prohibit customer-directed give-ups of work or money in consideration of listed business and a postponement of consideration of non-member access.

Non-Member Schedule

We have carefully considered both of the interim non-member alternatives. We strongly feel that the best interests of the securities industry and the investing public would be served by the

maintenance of minimum rates of commission, and therefore we concentrated on alternative (a) rather than alternative (b).

In considering alternative (a), we were particularly concerned with its impact on the public as we noted that it would raise commissions on odd lots in stocks selling at $50 and above and on round-lots up to 400 shares at $52.50 and above, and on round lots of more than 400 shares depending on how much the price exceeded $52.50.

We recognize that the reason alternative (a) raised commissions on certain trades was that you sought to lessen the disparity between the commission rates on high priced and low priced shares. However, we feel this disparity should be dealt with after more study, and that an interim schedule should not involve any increases in rates of commission.

Another of our considerations was the operational difficulties inherent in alternative (a) because of the continuation of an order over nine additional days after the first qualifying trades and the change to a different method of commission computation at the comparatively low breakpoint of 400 shares. Orders above the breakpoint would require special handling not required for orders at or below that point.

We understood that the ten day order was designed to relieve customers and fiduciaries of any conflict in deciding whether to complete an order in one day to minimize the commission charge, or whether to spread it out over more than one day to get better execution prices. However, our research into this question has shown us that in very few instances would the savings in commissions by executing an order in one day offset the disadvantages of a loss in execution prices of as little as 1/8, the minimum variation on stocks selling above one dollar. We are convinced that price of execution would continue to be the primary consideration in decisions of whether to complete an order in one day.

The operational difficulties involved in your proposed schedule could be reduced to an acceptable minimum by advancing the breakpoint from 400 to 1,000 shares and by limiting the duration of an order, for purposes of calculating a reduced rate of commission, to a single day.

The Honorable Manuel F. Cohen August 8, 1968

As an alternate to the first of your proposed interim schedules, we propose, for your consideration:

1) An order is defined as all executions pursuant to a single order for one customer account in one security on one side of the market on one day.

2) On an order up to and including 1,000 shares, no change from the present schedule.

3) On that portion of an order above 1,000 shares, the following rates for each round lot:

Price of Stock	Commission
\$1 - 28	0.5% + \$4
\$28 1/8 - 30	Same as for \$28/share
\$30 1/8 - 89 7/8	0.5% + \$3
\$90 and above	0.1% + \$39

Minimum \$6
Maximum \$75

4) When, on the application of the schedule in paragraphs 2 and 3, the commission would be in excess of \$100,000, paragraphs 2 and 3 shall not apply and the minimum commission to be charged shall be \$100,000.

As part of our effort to arrive at an appropriate interim schedule, we surveyed our member firms in detail on their orders of over 1,000 shares on March 13 and March 14, 1968. Based on the responses of 306 member firms doing an estimated 93% of all public securities business done on national securities exchanges, the interim schedule proposed above would have resulted in an annual reduction in security commission income of about \$150 million, or about 7%.

The implementation of this schedule would involve new order handling procedures on the part of member firms, and reprogramming of computers for those which use data processing equipment to compute commissions. The most time consuming of these would be re-programming, which is estimated to take at least three months. The effective date of the proposed schedule, therefore, would be at least three months after the amendment of the Exchange Constitution.

Intra-Member Rates

In your letter of May 28, 1968, you also asked that intra-member rates be reduced. We feel it would be reasonable as an interim measure to reduce intra-member rates by a percentage similar to the reduction in nonmember commission incomes.

It would be possible to reduce intra-member rates for orders over 1,000 shares, as in our proposed interim nonmember schedule. However, this would limit the effect of the reduction in intra-member rates to a relatively small number of members and member firms. Many member firms both in New York City and across the nation have their trades executed, and sometimes cleared as well, by other members or member firms, and our survey indicates that most of this business is in orders at or under 1,000 shares.

We feel it would be in the best interest of all Exchange member firms to make the lower intra-member rates applicable to all round lot orders. Accordingly, we propose that the reduction in intra-member rates be applied across the board by lowering the rates per share* in each price bracket by 7% as follows:

	Rate Per 100 Shares	
Price Per Share	Floor Brokerage	Clearance
Above $ 1 but under $ 2	$1.15	$1.85
Above $ 2 but under $ 5	1.30	2.10
Above $ 5 but under $ 10	1.95	3.25
Above $ 10 but under $ 20	2.90	5.75
Above $ 20 but under $ 40	3.40	6.80
Above $ 40 but under $100	3.60	7.15
Above $100 but under $150	4.05	8.10
Above $150 but under $200	4.20	8.40
$200 and over	4.65	9.30

Give-Ups

For several years, the Commission has urged the Exchange to prohibit customer-directed give-ups. Your Special Study of the Securities Markets and your Report on Public Policy Implications of Investment Company Growth both found in favor of the industry-wide abolition of customer-directed give-ups. The Commission has urged national securities exchanges to take such action in letters of July 18, 1966 and July 7, 1967. There has been extensive other correspondence from the Commission to this Exchange urging such action. The Commission said most recently in Release #8239 of January 26, 1968, proposing SEC rule 10(b)10: "Approximately 19 months ago, the Commission advised the exchanges of its belief that Exchange rules should be changed to preclude customer-directed give-ups."

The record of the current hearings concerning customer-directed give-ups, and the use made of them lends further support to the Commission's urgings that such give-ups should be prohibited.

In its recommendation on June 27, 1968 the Board of Governors approved in principle a step-by-step prohibition of customer-directed give-ups, in order to facilitate the adjustment of members and member firms to the changes in the pattern of securities trading which the prohibition is bound to bring about. Further reflection on this point has convinced us that a step-by-step prohibition would not be appropriate. The complex arrangements now existing do not lend themselves to step-by-step diminution, because they involve the use of unrelated trades as a basis for customer-directed give-ups. Thus any but an outright prohibition would result in a continuation of the present give-up practices until the final date for complete prohibition. Further, even if this were practical, in our opinion it would not be proper to permit these practices to continue.

One purpose of an interim schedule is to give the Commission, the Exchange and the customers of securities firms time in which to adjust to possibly new and, as yet, unforeseeable trading patterns, and to measure the impact of the interim schedule in light of these changes. It does not appear that the adjustment or the measurement can be accomplished unless the prohibition of customer-directed give-ups becomes effective at the same time as the interim schedule.

While a prohibition of customer-directed give-ups would be effective at the same time as the interim commission schedule, the new schedule would not be effective for at least three months. Securities firms and their customers would have this time in which to adjust to the abolition of customer-directed give-ups.

The testimony at the hearings makes it clear that the prohibition of customer-directed give-ups to be effective must be all inclusive, applying to give-ups by check or by work. It must also apply to trades both related and unrelated to the customer order which originally provides the funds to be given up. We propose that this be accomplished by adding to the first paragraph of Article XV, Section 1 of the Exchange Constitution:

> "No member, member firm or member corporation shall in consideration of the receipt of listed business and at the direct or indirect request of a nonmember

or by direct or indirect arrangement with a nonmember make any payments or give up any work or give up all or any part of any commission or other property to which such member, member firm or member corporation is or will be entitled."

As discussed, the Exchange firmly believes that the rule prohibiting customer-directed give-ups must be an integral part of the proposed interim nonmember commission schedule. Any minimum commission schedule, to be effective, must include a prohibition of all customer-directed give-ups.

Nonmember Access

At its June 27 meeting, the Board of Governors also recommended in principle a discount to nonmember brokers of one-third of the nonmember commission. The Board still favors this means of access to the Exchange market. However, because the question of nonmember access cannot be divorced from the question of institutional membership and because both subjects are yet to be taken up at the hearings now being conducted by the Commission, the Exchange is willing to defer action on nonmember broker access at least until those hearings are concluded.

* * *

The proposals in this letter, approved in principle by the Board of Governors of the Exchange at a special meeting yesterday, are the result of much conscientious and diligent effort by all interested parties. It is our strongest hope that the Commission will agree that these proposals will provide the best possible interim solution to the problems facing the securities industry today.

Sincerely,

NEW YORK STOCK EXCHANGE

ELEVEN WALL STREET

NEW YORK, N.Y. 10005

SPECIAL MEMBERSHIP BULLETIN

ROBERT W. HAACK
PRESIDENT

June 27, 1968

TO: Members and Allied Members

SUBJECT: Board Decisions on Volume Discount, Customer-Directed Give-Ups and Nonmember Broker Discount

At its policy meeting today, the Board of Governors decided on three basic elements for a new commission structure. These principles follow -- with one significant exception -- the proposals we put forward last January 2. Today's Board action was taken on the basis of a report from the Costs and Revenues Committee and after consultation with the advisory groups representing the viewpoints of regional firms and of the Association of Stock Exchange Firms.

The principles are being discussed with the Securities and Exchange Commission as the framework for a new commission schedule. A detailed schedule, as well as several alternates, are already being tested for their potential effect on the current mix of the securities business and on member firm revenues. It is hoped that, subject to the discussions with the SEC, the new schedule can be proposed during the summer.

Since the three proposals complement one another, the Board believes that final action with respect to each should be taken simultaneously. The three points are as follows:

(1) The Board of Governors reaffirms its approval of incorporating a volume discount in a new commission schedule. Such a discount would recognize the lower handling costs of block orders as compared to smaller transactions. It would also give directly to large investors, mainly institutions, and to the public that has entrusted its savings to the institutions, a reduction in commissions.

At the same time, the schedule we are working on would mitigate disparities that now exist between commission costs for low-priced and high-priced issues.

(2) Nonmember brokers, both domestic and foreign, who can meet prescribed qualifications would be entitled to a discount of up to one-third from the minimum commission schedule. We favor amendments to Article XV of the Exchange Constitution to allow qualified non-NYSE brokers to have access to our markets and be compensated directly for their efforts. The additional participation in our market should enhance its depth and liquidity.

Before such a change in our Constitution and Rules can be made, the problem posed by Section 3(a)(3) of the Securities Exchange Act of 1934 would have to be resolved. That provision defines a "member" as a person who is permitted to make use of the facilities of the Exchange for transactions thereon "with the payment of a commission or fee which is less than that charged the general public." Because of the obligations the Act places on the Exchange to police

and discipline members, it would have to be made clear that non-member firms qualified to receive such a discount would not be regarded as "members." This could be accomplished either by an amendment to the 1934 Act, or by an appropriate rule promulgated by the SEC under the Act.

(3) The Exchange considers that continuation of customer-directed give-ups weakens the economic basis of the minimum commission structure itself. Therefore, the Board has voted in favor of their step-by-step prohibition. For obvious reasons, customer-directed give-ups cannot be effectively abolished by the unilateral action of one national securities exchange. To be effective, the action must apply uniformly to all markets. If not, such give-ups would likely continue on any exchange whose rules permitted them, to the detriment of exchanges where they were not allowed.

At a time when the principle of minimum commissions is being questioned, it may be more difficult to defend the economic basis of the minimum commission law if members are able to give up, or give away, a substantial part of the minimum commission. In any case, a commission schedule that includes a volume discount would reduce the wherewithal for give-ups.

We are asking the SEC to take appropriate action to initiate step-by-step prohibition of all customer-directed give-ups. Step-by-step implementation, over a period of at least one year, would give firms an opportunity to adjust to the economic impact of such a change. We would, of course, expect continuation of bona fide agency-principal relationships between members for such services as clearing, floor brokerage and introducing of accounts on a disclosed basis.

The Costs and Revenues Committee is still continuing its work with respect to such matters as intra-industry rates and policy regarding institutional membership, and expects to report on these subjects at a later date.

If approved by vote of the membership, the new commission schedule and related amendments and rules would be the first revision of New York Stock Exchange rates in nine years.

Basic shifts are taking place in the nature of the securities business. It is imperative that our commission structure be responsive to the facts of life in today's marketplace.

In the letter of January 2 to the membership, it was noted that a major factor in the Board's endorsement of important structural changes at that time was that a network of practices in the industry are eroding the present minimum commission structure.

An intricate maze of give-ups, give-aways, reciprocal practices, manufactured participations in trades, transported trades moved from one exchange to another, and the like, have resulted in considerable leakage of the commission dollar.

Regulatory developments since January have underscored the need for taking action along the lines then recommended.

Shortly after we presented our January proposal, the SEC advanced an incompatible suggestion, its proposed Rule 10(b)-10, requiring that any give-up directed by an investment company must, in effect, be rebated to the institution. In a comment on that proposal, the Department of Justice questioned the necessity for

[illegible] propriety of any minimum commissions. Then the SEC in advancing its proposed "interim" commission proposal in May, and requesting that the NYSE place it in effect by September 15, 1968, offered as an alternative, the abolition of minimum commissions on all orders above $50,000. The SEC's "interim" proposal quite apart from its serious effect on member firm revenues, would present severe operational problems.

As you know, SEC investigative hearings on the commission structure and related matters begin in Washington next week. Give-ups and reciprocal practices are among the topics the SEC intends to examine. Fortunately, the Exchange's formulation of policy on these matters began long before the scheduling of the present hearings. With the principles defined for restructuring commissions, and a new schedule near completion, the Exchange is in a solid posture.

The three policy decisions reached by the Board today, coupled with the commission schedule to follow, speak directly to the changing nature of the securities market and the questions raised by the SEC and the Justice Department. They embody a totally modernized approach to the way the membership charges for its services, parallel in spirit to the automation and other up-to-date techniques that have been introduced recently into such aspects of our business as market data communications, odd-lot handling, and clearance and delivery of securities.

A new commission structure along the lines of the three policy decisions reported above is bound to involve an overall decrease in member firm income on a given volume of business.

The Exchange is making detailed calculations of the economic effects of the possible commission changes on member firms, based on careful sampling studies and examination of Income and Expense reports. When the final commission schedule is developed, we will be in position to estimate its total costs and the effects on different types of firms, varying, of course, with the nature of each firm's commission business.

It should be noted that the "interim" commission schedule proposed May 28 by the SEC, which was figured on the 1966 Public Transaction Study, involved a reduction of approximately $110 million in gross member firm revenues. The reduction could be much greater on the basis of the membership's current volume and mix of business, and if allowance is made for revenue losses resulting from a discount to qualified nonmember brokers.

The need to restructure commissions comes at a time when the securities industry, which is characteristically cyclical in its level of activity, is at an all-time peak in volume of business. The industry is incurring heavy costs to gear itself for handling this volume. The best prospect for our membership to recover the immediate costs of a restructuring of commissions lies in fostering long-term growth in demand for the membership's services to the investing public.

The principles approved by the Board, and the commission schedule being prepared to carry them out, will encourage such long-term growth. In the long run, these changes may well present member firms an opportunity to attract additional business to the Exchange from nonmember brokers in this country and abroad, improving the position of the Exchange and its members. Such additional business would add to the depth and liquidity of Exchange markets, thus enabling the Exchange marketplace to do a better job for all investors who use it.

We will, of course, keep you informed of developments and hope before long to be able to submit, for a vote of the membership, a full commission schedule and related Constitutional amendments.

Robert W. Haack

CHAIRMAN'S OFFICE
MAILED
AUG 30 1968

Signed by: ____________

Mr. Robert W. Haack
President
New York Stock Exchange
Eleven Wall Street
New York, New York 10005

Dear Mr. Haack:

We have received your letters of August 8 and 20, 1968 responding to our letter of May 28, 1968 in which the Commission requested pursuant to Section 19(b) of the Securities Exchange Act of 1934 that the New York Stock Exchange effect changes, to become effective on or before September 15, 1968, in its rules, policies and practices in respect of its commission rate by modifying Article XV, Section 2(a)(1) and appropriate other sections of the Exchange constitution and rules either (a) in accordance with revised minimum commission rates as set forth in an attachment to our letter or alternatively, (b) by eliminating, with respect to orders in excess of $50,000, requirements for minimum rates of commission. We also stated in our May 28 letter that the Exchange should implement appropriate reductions in the current intra-member rate for non-executing firms or eliminate requirements for minimum intra-member charges to such non-executing firms.

Your letters of August 8 and 20, 1968 indicate that pursuant to our Section 19(b) request the Board of Governors now is proposing "a specific interim non-member commission schedule embodying a reduced rate for volume orders." We note that you have chosen to proceed with a revised minimum commission rate schedule rather than with alternative (b) stated in the Commission's letter of May 28. In addition, the Board is proposing a specified interim intra-member reduced commission schedule. The Board's proposal includes the following new language to be added to Section 1 of Paragraph 1701 of the Exchange constitution:

> "No member, member firm or member corporation shall, in consideration of the receipt of listed business and at the direct or indirect request of a nonmember or by direct or indirect arrangement with a nonmember, make any

Mr. Robert W. Haack, President

> payment or give up any work or give up all or any part of any commission or other property to which such member, member firm or member corporation is or will be entitled."

Your letter of August 8 states that the change in Paragraph 1701 would "... prohibit customer-directed give-ups of work or money in consideration of listed business ..." We understand that this change is intended to prohibit all forms of customer-directed give-ups, but is not meant to preclude or interfere with non-customer directed inter-dealer reciprocal business on regional exchanges nor is it designed to prevent the procedures whereby broker-dealer affiliates of institutions may credit or return commissions to institutions with which they are affiliates.

In view of the considerations set forth in your letters of August 8 and 20 and subject to confirmation of the understanding stated in the preceding paragraph of this letter, we hereby modify the direction to you, pursuant to Section 19(b) of the Exchange Act contained in the Commission's letter of May 28, 1968 to the effect that: alternative (a) of such direction will be satisfied by the adoption of the specific interim non-member commission schedule described in your letters of August 8 and 20, the specific interim intra-member commission schedule also described therein, and the additional language to the Exchange constitution prohibiting customer-directed give-ups. Alternative (b) of the Commission's May 28, 1968 direction to your Exchange remains unmodified should your members elect not to adopt alternative (a) as so modified.

We wish to emphasize that these changes are interim steps. The Commission has reached no conclusion on whether the particular rates embodied in the interim non-member commission schedule (described in your letters of August 8 and 20) reflect the optimum form of rate structure for your Exchange or that any schedule of specific rates would provide a complete answer to the problems raised in Release No. 8239 and the comments thereon. Additional measures with respect to these and other matters are under continuing consideration and will be examined further in the course of our hearings. In directing you to adopt these measures on an interim basis we assume that you will address yourself as promptly as possible to the matter of changes of a permanent nature.

Sincerely,

Manuel F. Cohen
Chairman

8/30

THE URGENCY FOR AN IMMEDIATE COMMISSION INCREASE
(Statement by Mr. Robert W. Haack before the Securities & Exchange Commission, February 13, 1970)

Introduction

Four of every ten NYSE member firms doing a public business lost money on security commission income (including net margin interest income) in the first half of 1969. Their cumulative loss amounted to $58 million. Losses ranged up to $5.7 million, with 13 firms losing over $1 million and 51 losing over $250,000. The profit squeeze reflects the industry's attempts to continue to upgrade and modernize operations in the face of a drop in income and sharply rising costs. Prices paid by the industry for the goods and services it buys rose an estimated 6% last year alone, and close to 60% since the last commission rate hike in 1958.

In the face of these financial results, it takes little imagination to foresee that member firms in their effort to minimize losses will have no recourse but to trim the quality of their services to customers, unless revenue relief is forthcoming. Even more adverse to the interests of the investor and to confidence in the securities markets would be the repercussions resulting from financial failure.

Despite their precarious profit situation, NYSE member firms as yet have hesitated to take cost-pruning steps where the effect would be to impair their ability to handle future volume increases. Very much in their minds has also been the risk of a repetition of the 1968 paperwork situation. At present, automation expenditures among NYSE firms are running at a $100 million annual rate. By the end of this decade, they are expected to be approaching $800 million a year. In 1969, employment associated with security commission income continued to rise despite declining income and profits. Non-sales employment was 84,000 at mid-year, some 5,000 greater than at year-end 1968.

However, even a pickup in volume is not likely to produce reasonable profit levels for a substantial number of member firms with relatively low revenues per ticket. This is indicated by our data on transaction revenues. For example, firms which suffered losses in January-June 1969, would have to increase their aggregate SCI 14% merely to break even -- and this allows for no related increases in costs other than sales commissions, floor brokerage and clearance charges. Only a fraction of the income shortfall could be attributed to the 3% dip in average daily volume between 1968 and the first half of 1969. Even if volume had been sustained at the 1968 level, an income increase of 10.5% would have been required to pull the loss firms up to the break-even point.

Return on Capital

The $30.1 million pre-tax profit earned on SCI in the first half of 1969 translated into the equivalent of a 3.5% annual after-tax return on capital, and even this depressed rate was due to net margin interest income rather than to security commission profits. On the basis of available data for the latter half of 1969, the actual return for the year is even lower.

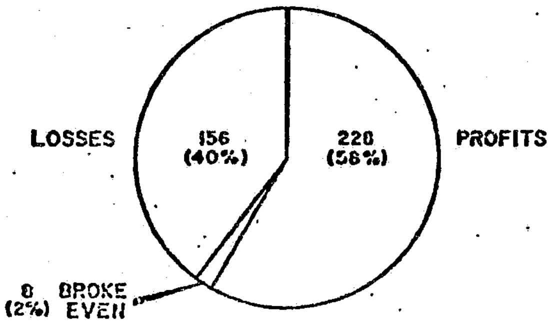
The poor profit performance can be better appreciated in the perspective of recent historical experience in American industry generally. Analysis of a group of 51 industries representing virtually the whole range of American enterprise indicates an average five-year after-tax return on capital (1964-68) of 12%. (By far the lowest return was for railroads, 4.7%.) Only a quarter of all industries had returns of under 9.8%.

Because of the risks in the securities business, a more valid comparison is the return on security commissions with returns in industries in the upper earnings range. As is generally acknowledged, the greater the volatility of annual profits the greater the return necessary to compensate for these risks. Capital will not flow to risk enterprises unless adequately compensated. Analysis of five-year average return on capital shows an upper quartile return of 12.8%. About one-sixth of that group experienced returns in excess of 15%. Two industries experienced returns in excess of 20% -- toiletries and cosmetics (24.4%) and mobile homes (21.2%).

Distribution of Return on Capital -- 1969

The average 3.5% after-tax return on SCI capital in the first half of 1969 understates the urgency of a sizeable segment of the industry for quick rate relief. Of 392 firms analyzed, 136 lost money on their security commission income (including net margin interest income) and eight broke even. Losing firms accounted for 37% of security commission income. (If all lines of business are considered, 117 firms suffered losses -- about one-third of member firms doing a public business.)

NYSE MEMBER FIRMS WITH PROFITS OR LOSSES 2
1st HALF 1969



Among the 156 firms that experienced losses on SCI income in 1969, fully one-quarter had losses equivalent to over 25% of capital and over one-third had losses in the 11% to 25% range.

Among the 228 firms with SCI profits, about one in four had after-tax profits in excess of 15%, while about one in three had after-tax profits of 5% or less.

Taking all 392 firms together, the proportion with after-tax returns in excess of 15% was only one out of six. At the other end of the scale, the proportion of all firms with losses on their capital in excess of 15% was one out of five. One out of ten firms experienced losses of more than 25% on their invested capital. Obviously, such monumental losses cannot be sustained by any industry for very long.

LOSS OR AFTER-TAX RETURN ON CAPITAL
FIRST-HALF 1969 AT ANNUAL RATES

Profit or Loss Rate (Per cent)	Number of Firms		Proportion of Total Firms (Per cent)	
Losses				
51% & over	14		4%	
-26 - 50	25		7	
-16 - 25	32		8	
- 6 - 15	44		11	
- 1 - 5	41		10	
Total, loss firms		156		40%
Broke even		8		2%
Profits				
1 - 5	83		21	
6 - 15	83		21	
16 - 25	34		8	
26 - 50	14		4	
51% & over	14		4	
Total, profit firms		228		58%
Total, all firms		392		100%

Profitability and Ticket Size

A major factor contributing to profitability, or lack of it, is commission earned per ticket. This shows up clearly in first-half 1969 income and expense data. Firms with pre-tax profits on SCI grossed an average of $56 per transaction, 1.4 times larger than the $40 average for all firms with losses. Particularly striking are the extremes in ticket size among the most profitable firms and those with the largest rates of loss. The ten firms with the largest pre-tax profits as a per cent of SCI (excluding margin interest income) averaged $512 in commissions per transaction. This compares with only a $31 average for the ten firms with the largest relative losses. It is clear that major losses were centered in firms writing the smaller, most frequent types of orders.

In all, 155 firms had commissions per transaction below the $39.69 average for all loss firms. Of that total, seven in ten suffered losses. Conversely, 106 firms had commissions per ticket in excess of the $56.12 average for all profitable firms. Of those, seven in ten made a profit. 3

These results underline the critical need for prompt enactment of a rate structure which will not only increase overall revenues, but restore balance to the commission schedule -- enabling firms to earn a fair rate of profit no matter where they choose to concentrate their commission business, whether on large or small orders. For most firms, that marketing choice does not exist today. The small order business produces a loss for seventy per cent of the firms engaged in it. As the economic backbone of a major industry, the commission schedule -- in the interests of both investors and the quality of the securities markets themselves -- must restore the incentives to develop and service all orders.

Member Firm Profitability -- Third Quarter

Unfortunately, industry-wide income and expense data are not available beyond the first-half of 1969. However, limited data for the third-quarter are available from Wright Associates, a management consulting firm that does continuing financial analyses for a number of NYSE member firms.

The data from Wright Associates offer evidence of further deterioration in the industry's bleak profit picture in the third-quarter of 1969. The 16 firms reporting to Wright Associates, together accounting for 22.6% of NYSE business in the third quarter, had operating losses equivalent to 15% of total income, but before reserves, interest on capital and income taxes. In other words, the sample firms, in effect, paid a subsidy of 15¢ on the revenue dollar for the privilege of serving their customers. Since Wright Associates data are for total income, they probably understate the size of SCI losses and overstate the size of SCI profits.

The third quarter loss virtually wiped out the modest total operating profits that the 16 firms made in the first and second quarters -- respectively, 8.5% and 5.9%. For the first nine months of 1969, profits for this group of large member firms was a miniscule 1.1% of gross income (before reserves, interest on capital and income taxes).

Among the 16 sample firms, only one turned a profit in the third quarter and the median firm had a 14.1% loss on gross income. The largest losses were 23.3%, 32.1%, 53.2%, and 61.5%.

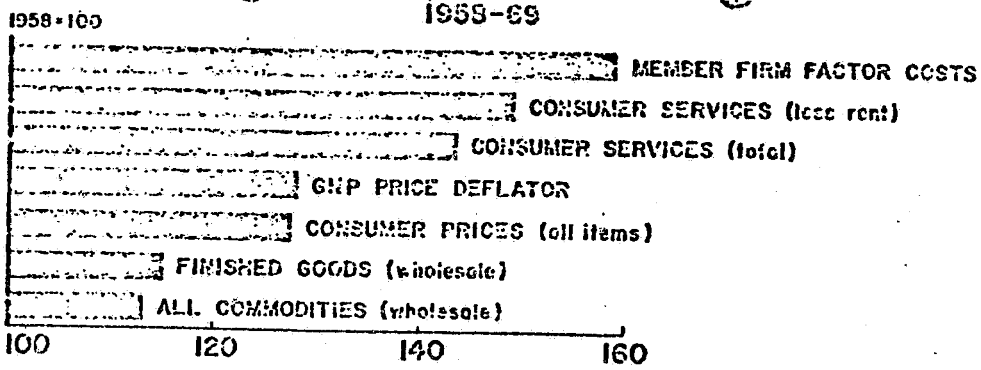
The sample firms' poor 1969 profit performance reflects a relatively rapid increase in break-even points, as firms continued to add to capacity in the face of flagging volume. For example, average daily third-quarter 1969 NYSE volume was off about 5% from the year earlier figure, to 11.4 million shares a day. Over the same period, average break-even NYSE volume for the firms in the Wright Associates sample rose 32%, to 12.7 million shares daily.

Thus, what would have been a profitable volume level for the sample firms a year earlier -- 11.4 million shares traded daily on the NYSE against a break-even point of 9.6 million shares -- was completely inadequate in 1969. The gap between the 11.4 million average daily shares traded in the third quarter and the 12.7 million break-even point is reflected in the sizeable third-quarter losses, discussed above. These results graphically illustrate the industry's historic dilemma -- whether to maintain capacity high enough to comfortably handle volume upswings, thereby courting financial difficulty, or to hold capacity close to short-term needs and risk operating difficulties.

Cost Trends

Rising costs of doing business have hit the securities industry particularly hard. One reason appears to be the office boom, especially in New York City, which has intensified competition for space, employees and services. Over the period 1958-69, the weighted average of costs of goods and services purchased by NYSE member firms rose an estimated 50%. This is 4.8 times the increase in the Wholesale Price Index and about 2.2 times that in the overall Consumer Price Index. It is also well above the much publicized climb in the service component of the Consumer Price Index (44%) over the 1958-69 period.

CHANGES IN SELECTED PRICE INDEXES
1958-69



SOURCES: Depts. of Labor & Commerce. Index of member firm costs developed by the NYSE.

A key factor in the strong rise in member firm unit costs is the wage bill. Rates for clerical workers rose, on average, 59% between 1958 and 1969. And this does not include allowance for the widespread introduction -- under competitive labor market conditions -- of new, and improvements in existing, employee benefit programs (a $150 million item in 1969). Manufacturing basic wage rates, by comparison, averaged a 49% increase.

The price of 100 square feet of rental space in 1958, purchased only 52 square feet of space in 1969. Similarly, a dollar spent on advertising in 1969 bought only 55% as much advertising as it did in 1958. The industry's extensive communication network cost 50% more to maintain than a comparable network would have cost in 1958. Comparisons of this type can be made for virtually the entire gamut of goods and services purchased by NYSE member firms, as indicated in the table below.

1969 PURCHASES OF GOODS AND SERVICES BY NYSE MEMBER FIRMS IN 1958 PRICES

Cost Items	Estimated 1969 Expenses #* (Millions)	% Increase in Unit Costs 1958/1969	1969 Expenses in 1958 Prices (Millions)
Professional Fees	$ 83.2	79%	$ 46.5
Market Information Services	44.0	87	23.5
Subscription to Periodicals	27.9	65	16.9
Telephone and Telegraph	150.0	50	100.0
Advertising and Sales Literature	65.5	82	36.0
Entertainment and Travel	70.0	40	50.0
Equipment Rental	81.1	-1	81.9
Postage, Stationery and Office Supplies	128.7	61	79.9
Clerical and Administrative Salaries	1,234.8	59	776.6
Other Employee Benefits	150.2	67	89.9
Rent, Heat, Light, etc.	144.2	91	75.5
Leased Wires	38.5	75	22.0
Tickers and Projectors	26.7	85	14.4
Total	$2,244.8		$1,413.1

WEIGHTED 1969 INDEX OF PRICES PAID BY MEMBER FIRMS, (1958 = 100) -- 159.

1969 expenses are annualized first-half data.

* Data exclude local tax costs since the complete restructuring of New York City taxes in 1966 makes comparisons with prior years impossible. Its basic thrust, however, was to raise the tax burden.

Data also exclude interest costs.

Sources: Budget data from member firm income and expense reports.

The lone exception is equipment rental, for which prices fell 1%. For many firms, however, the decline is illusory. It reflects adjustment for quality improvements in equipment, particularly computers -- not lower actual costs per unit.

Commission Rates Versus Other Changes -- 1958-1969

Over the years since the last commission rate adjustment, the seemingly inexorable rise in prices of other services has received prominent monthly attention in all the media. The 49% increase in the services component (excluding rent) of the Consumer Price Index since 1958 is well known. Insurance and finance costs, alone, have risen by over one-third since the end of 1965. Over the same four-year span housekeeping and home maintenance expenses were up about one-third. Two trips to the family doctor or to the barber today cost more than three trips did in 1958.

A current vivid example of how business costs have been pushing against income is the discernible trend among real estate brokers to boost their commission rates -- despite soaring home prices, upon which the rates are based. The securities industry has had no such cushion to fall back on. Stock splits serve to hold the average price per share down, so commissions on any given size order benefit relatively little from the long-term rise in stock prices -- and in bad market years actually declines.

This is illustrated in the following table which shows the commission on a 100 share order traded at the average NYSE round-lot price for the designated year.

INCOME PER 100 SHARE TRADE BASED ON THE AVERAGE ROUND-LOT PRICE PER SHARE

Year	Average Price Per 100 Shares	Commission *
1958	3,390	35.95
1959	3,980	38.90
1960	3,700	37.50
1961	3,870	38.35
1962	3,800	38.00
1963	3,910	38.55
1964	3,900	38.50
1965	3,920	38.60
1966	4,360	40.80
1967	4,250	40.25
1968	4,320	40.60
1969	4,040	39.20

* 0.5% of value plus $19.

Because of the relative stability of revenue on any given size order, it becomes increasingly difficult to break-even -- much less to make a profit -- on smaller orders. While it is true that the size of securities orders have trended upward, by far the bulk of orders continue to be for 100 shares or less. (While orders of 100 shares or less account for 70% of all orders, they account for only 21% of shares traded.) Since the larger, more profitable orders are not evenly distributed among member firms, the increase in average ticket size does relatively little to help those firms with a large retail business.

For example, taking all markets together (NYSE, Amex, O-T-C and regionals) the average commission per 100 share order in the first half of 1969 was $30.79. This was less than half the average for all orders, $63.13. Among the 16 large firms for which detailed data are available (23% of NYSE business), average commissions per transaction for all except two came closer to the lower figure than the higher. The average commission was $42.60 and the range was from $37.63 to $50.51.

6

COMMISSION PER SECURITY AGENCY TRANSACTION
16 LARGE RETAIL FIRMS
FIRST HALF 1969

Firm	Average Commission*	Firm	Average Commission*
1	$37.63	9	$42.76
2	38.18	10	43.14
3	38.30	11	43.84
4	39.49	12	45.21
5	40.22	13	45.43
6	40.49	14	45.48
7	40.69	15	49.19
8	41.12	16	50.51

* Mean of averages for the first and second quarters.

Source: Wright Associates, Management Consultants, New York, N.Y.

For all NYSE member firms that had a loss on SCI business (before margin interest adjustment), the average commission earned on all transactions was $39.69.

What If Commission Rates Moved in Step with General Price Averages?

The industry's financial plight in 1969 reflects in part, at least, the squeeze between the relatively rapid rise in member firm costs and the stability of its rate schedule.

If commission rates had drifted up each year since 1958 in step with the overall increase in the prices of consumer services (excluding rent), the relatively small annual increments would have lifted the average commission on a 100 share order on the NYSE in 1969 to $53 -- about 50% higher than the actual $35.45 average. How this series of changes, each small in itself, would have mounted over the 1958-69 period is illustrated in the following table.

AVERAGE COMMISSION ON 100 SHARE ORDER OF NYSE STOCK
IN 1969 IF RATES INCREASED IN STEP WITH THE
CONSUMER PRICE INDEX FOR SERVICES (EXCLUDING RENT)

1958	$35.45
1959	36.66
1960	38.07
1961	39.00
1962	40.01
1963	40.59
1964	41.48
1965	42.54
1966	44.31
1967	46.47
1968	49.13
1969	52.89
1969 (actual first-half average)	35.45

Sources: Rates of increase based on the Consumer Price Index as reported in the following: Economic Report of the President, 1969 (p. 279) and Economic Indicators, December 1969 (p. 26).

Conclusion

Fragmentary reports of securities firms' third-quarter and fourth-quarter operating results, together with industry-wide data on first-half performance, sketch a dark financial picture of the securities industry. They emphasize the need for quick action on initiating a new commission rate schedule if the meataxe approach to economizing is to be forestalled.

At stake is no less than the industry's financial health, upon which rests its ability to meet efficiently long-term demands of both individual and institutional investors.

Commission File

NEW YORK STOCK EXCHANGE

ELEVEN WALL STREET

NEW YORK, N. Y. 10005

ROBERT W. HAACK
PRESIDENT

TO: Members and Allied Members

March 19, 1970

SUBJECT: Interim Service Charge

The Board of Governors today approved in principle an interim measure to relieve the cost pressures on the securities industry of handling commission business, particularly for smaller orders.

The plan provides for instituting a service charge equal to not less than the lesser of $15 or 50 per cent of the required minimum commission. A copy of the proposed rule and a table showing examples of the effect on typical orders are enclosed.

Although firms should be aware that since this is a minimum service charge, the Exchange Constitution does not permit the charge to be shared in the form of compensation to member firm registered representatives, we would remind firms that they may continue to follow their individual policies in sharing the minimum commission with their sales personnel.

The charge would be imposed by means of a rule of the Stock Exchange which now goes to the Securities and Exchange Commission for their comments. Allowing for the normal three-week waiting period for SEC comments, if the Commission interposes no objection, the new charge could be given final approval by our Board on April 12 and take effect shortly thereafter. However, we have asked the SEC to expedite their review in order that we might have their comments in less than three weeks.

It is evident that this interim charge is not a broad revision of the commission structure, such as outlined by our consultants, National Economic Research Associates, in the proposal filed with the SEC February 13. However, the SEC staff has indicated that it may be many months before it can complete its review of the NERA proposals for a basic restructuring of commission rates. Meanwhile, the industry urgently requires immediate interim relief. The $15 charge, with its 50 per cent limitation, would accomplish this objective by increasing gross commission income of member organizations by an estimated 18 per cent (if applied to gross revenues for the first half of 1969). This is approximately the same size as the increase for all markets as recommended in the NERA proposal.

Chairman Lasker, Vice Chairman DeNunzio and I have told the Commission that we believe this charge is the minimum necessary to restore some measure of financial health to the securities commission business. While it will not be sufficient to make small orders fully remunerative, it will allow some of the financial relief necessary for member firm organizations during the period immediately ahead.

We believe that this proposal has several important advantages to recommend it:

(1) The order charges would flow primarily to those firms most in need of relief.

(2) The plan keeps the increases paid on small orders to a bare minimum, both by limiting the aggregate dollars requested and by accepting the 50 per cent ceiling. The NERA schedule would increase commission rates on orders up to 399 shares by a total of $660 million if applied by all NYSE member firms to agency trades in all markets. Our interim charge would yield increases only two-thirds as great, less than $450 million.

(3) The public is protected by the fact that the net amount of the interim relief is not substantially different from the aggregate ultimate relief proposed by NERA on a net basis.

(4) The interim charge would tend to move overall brokerage charges more closely in line with the costs of servicing these orders. Thus we believe that this step will begin to bring rates in the direction of a more balanced and more equitable structure.

(5) The 50 per cent ceiling on any rate increase mitigates the impact of the higher charges needed by member firms on small orders, especially odd-lot trades. With a heavy toll of inflation since 1958, when rates were last changed, there should be little justifiable opposition to a realignment of charges which limit the increase to a 50 per cent maximum. The imposition of the 50 per cent ceiling makes it necessary to spread some of the needed increases among other size orders, which accounts for the fact that we are now recommending an interim increase in rates on all orders up to and including 1,000 shares.

(6) This proposal would allow member firms to meet the costs of their retail orders but it would not necessarily make these profitable. Because the proposed interim charge would provide only partial relief, and because it would still not assure a positive return on capital for firms in the retail end of the business, we would hope that this interim adjustment would be replaced by a more permanent and more sufficient commission rate schedule before long.

(7) Another feature which recommends the interim proposal is its simplicity. It should be easy for the public to understand an order charge such as we are proposing. We believe this proposal also has merit from an operations standpoint in that firms at present must account separately for orders in excess of 1,000 shares.

The interim charge was recommended unanimously by the Costs and Revenues Committee and voted unanimously by the Board of Governors. A wide segment of our industry has been acquainted with the plan at special meetings this week and there has been no opposition in any quarter.

I think you will agree that on an emergency basis this interim charge will help the industry to recover more of the costs of serving the small investor. This should provide substantial encouragement to firms to maintain and increase their service to the small investor whose continued participation is essential to the liquidity of the central market.

Robert W. Haack

Proposed Rule 383 on Service Charge

In addition to the commission computed in accordance with the provisions of paragraph 2(a)(1) of the Constitution, each member organization shall charge and collect upon the execution on the Floor of the Exchange of any order for the purchase or sale for the account of a non-member or an allied member of 1,000 shares or less a service charge equal to not less than the lesser of $15 or 50% of such commission. For the purposes of this Rule, an order shall be deemed to include all purchases or sales for one account of round lots or odd lots or both of a single security, on the same day, pursuant to a single order.

COMMISSIONS PLUS PROPOSED SERVICE CHARGE

Shares Per Order	Price $10	$20	$40	$50	$75	$100
20	$ 9.00	$ 13.50	$ 19.50	$ 22.50	$ 30.00	$ 37.50
50	15.00	22.50	37.50	44.25	50.75	57.00
100	25.50	40.50	54.00	59.00	61.50	64.00
200	49.00	69.00	93.00	103.00	108.00	113.00
500	100.00	150.00	210.00	235.00	247.50	260.00
800	151.00	231.00	327.00	367.00	387.00	407.00
1,000	185.00	285.00	405.00	455.00	480.00	505.00
Over 1,000			No Change			

PER CENT CHANGE OVER PRESENT COMMISSIONS

Shares Per Order	Price $10	$20	$40	$50	$75	$100
20	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%
50	50.0	50.0	50.0	50.0	42.0	35.7
100	50.0	50.0	38.5	34.1	32.3	30.6
200	44.1	27.8	19.2	17.0	16.1	15.3
500	17.6	11.1	7.7	6.8	6.5	6.1
800	11.0	6.9	4.8	4.3	4.0	3.8
1,000	8.8	5.6	3.8	3.4	3.2	3.1
Over 1,000			No Change			

The following letter was dictated by Shelley Rappaport of the SEC on 4/2/70:

April 2, 1970

Mr. Robert W. Haack, President
New York Stock Exchange
11 Wall Street
New York, New York 10005

Dear Mr. Haack:

In your letter of March 19, 1970 you submitted for our review pursuant to Securities Exchange Act Rule 17a-8, a proposed rule which would require member organizations to impose a surcharge in the form of a service fee of $15 or 50% of the applicable commission, whichever is the lesser, on orders of 1,000 shares or less. The Exchange states that this service charge is needed to give interim financial relief to the industry while the Commission considers the proposals for longer term revisions in the existing rate structure submitted by the Exchange on February 13, 1970.

In support of the proposed interim increase, the Exchange represents that a large number of its member organizations which do a public business sustained substantial losses in 1969 and that the situation has further deteriorated during the first quarter of 1970. Data obtained by the Commission confirms the loss experience of these firms. Past losses and the prospect of a continued financial drain have influenced many firms to impose limitations on their service to small investors. Based on studies prepared by the National Economic Research Associates, Inc. as supplemented by more recent samplings of member organizations, the Exchange estimates that a surcharge of $15 limited to 50% is required to provide adequate brokerage services for small investors and to retain needed capital within the securities business.

The Commission is aware of the contribution of small investors to the depth and liquidity of our trading markets and considers it to be vital to the public interest that such investors continue to be able to participate directly in equity investment. We are concerned with the financial problem of the industry and the losses sustained in the past year and during the first quarter of 1970. Accordingly, we will not object to the Exchange imposing an interim surcharge on rates to provide emergency financial relief while more fundamental alterations of the existing rate structure can be considered. However, we believe such action can be viewed as justifiable only if the service fee is to be imposed for a 90-day period only and will expire thereafter. This self-liquidating factor would assure that the increase will, in fact, be an interim measure. Its continuance for more than one quarter will require a review of the economic conditions, including transaction

volume levels, existing at that future time.

The Commission expressly predicates its non-objection to the interim increase in charges upon its expectation that the Exchange will take all steps necessary to assure that full brokerage services for small investors are restored and that transaction size and other limitations on such accounts imposed in the last year by the Exchange's membership will be removed. We also expect that the Exchange will undertake to make certain that the additional revenues produced by the interim surcharge will be received by the member firm obtaining the customer's order, and will be prudently employed by its member organization to improve their operations and financial position.

Lastly, we wish to emphasize that the Commission's action is based on our understanding that immediate financial relief is required. Our study of the existing commission rate structure will continue and we shall also monitor the operation of the interim fee arrangement. A full examination of the proposals for longer term revisions in the rate structure will be made as expeditiously as possible. In this regard, the Commission expects that the Exchange will promptly comply with our request to make available all underlying data and materials required for such review.

Sincerely,

s/ Hamer H. Budge, Chairman
Securities & Exchange Commission

For RELEASE Thursday, July 2, 1970

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C. 20549

Securities Exchange Act of 1934
Release No. 8923

The Securities and Exchange Commission today announced that its commission rate hearings would be reconvened July 13 and continue, if necessary, for the remainder of that week to receive submissions of evidence pertinent to the question whether it is necessary or appropriate in the public interest and to insure public investors adequate access to the securities markets, to extend for some further period of time the interim service charge provided in New York Stock Exchange Rule 383 and related rules of other exchanges. Pending action of the Commission in response to such hearings the Commission will not take action to prevent the temporary continuation by the exchanges of such service charges.

The Commission had anticipated initially that the service charge would expire on July 6 and that further extensions of it would be unnecessary. 1/ The New York Stock Exchange has submitted a request for extension, which was reprinted in the Commission's Release 34-8914. On June 30, 1970, the Exchange made its submission of data in support of the service charge extension, a copy of which is included herein. The New York Stock Exchange also submitted on June 30, a proposed new minimum commission rate schedule which is intended, if adopted, to supplant the existing commission rate schedule as well as the service charge.

In permitting the service charge to continue until the Commission has an opportunity to consider the proposals and comments, the Commission imposed the same terms and conditions which it had initially required including the removal of all restrictions by member firms on transactions by small investors.

The hearing will be reconvened at 10:00 a.m. on July 13 at the Commission's headquarters, 500 North Capitol Street, Washington, D. C. 20549. The Commission has requested the New York Stock Exchange to appear on that date to submit testimony and relevant data concerning its request for an extension of the interim service charge. The Commission invites interested persons, including the other exchanges, to submit their views and requests any persons who may wish to present testimony to file appropriate summaries of their presentations with the Secretary of the Commission not later than July 10, 1970.

1/ See the Commission's Release 34-8860 of April 2, 1970. The service charge provides that transactions executed on one day pursuant to a single order in a security shall be subject, in addition to the applicable minimum commission, to a service charge of the lesser of $15 or 50% of such minimum commission and that transaction size and other limitations on small orders imposed by member firms are suspended while the service charge is in effect.

The New York Stock Exchange submission of data in support of the service charge extension follows:

June 29, 1970

The Honorable Hamer H. Budge
Chairman
Securities and Exchange Commission
500 North Capitol Street, N. W.
Washington, D. C. 20549

Dear Mr. Chairman:

In my letter of June 18th, I promised to provide the Commission with more recent statistics, specifically May data, on the effect of the service charge on member firm profitability. We have now completed this analysis. The attached report provides not only more current information but it includes an allocation of profit and loss to the securities commission business. It also analyzes the effect of the service charge on the profitability of three broad categories of firms: Retail firms, defined as those with average size transactions between 1 and 399 shares; diversified firms with average trades between 400-999; and institutional firms with an average of 1,000 shares and more.

The overall profitability of member firms has deteriorated markedly. During the last quarter of 1969, about two-thirds of all firms were in the black. By contrast, in the months of April and May, 1970, two-thirds were showing losses. Not only were fewer firms in the profit column, but the dollar amount of profits shrank dramatically. During the fourth quarter of 1969, the firms in our sample -- accounting for two-thirds of the industry -- earned a net profit of $88.6 million. In the most recent months of April and May, these firms lost $28.7 million and $20.6 million. I should point out that these losses were incurred despite the fact that our volume averaged 10.1 million shares per day in April and 12.3 million in May.

The report shows the importance of the service charge, particularly to firms specializing in retail orders. For these firms, the service charge produced $8.4 million in April and $16.2 million in May. Had it not been for the service charge, their losses on commission business would have mounted in April from $23.4 million to $31.9 million, and in May from $9.9 million to $26.1 million. I might add that the retail firms received over 90 percent of the revenues generated by the service charge.

As you know, the service charge has not produced the income expected of it. At the level of volume in April and May, the service charge provided only two-thirds of its anticipated revenue. But even if all of it had been realized, the firms would have had a hard time breaking even. Our statistics indicate that the actual cost to the public has averaged less than $10 per order because of the 50% maximum limitation.

On the basis of the attached analysis, it is clear that the service charge, though inadequate, is an essential interim measure and we renew our request for its extension.

Sincerely,

Robert W. Haack

THE EFFECT OF THE SERVICE CHARGE ON MEMBER-FIRM PROFITABILITY

Introduction

The interim service charge was implemented to provide financial relief to firms doing a securities commission business with the public. It was an emergency measure designed to restore some degree of financial health to the securities commission business. Its continuation today is as urgent as ever. In the first quarter of this year, retail firms suffered twice the losses on their securities commission business incurred in the final quarter of 1969. Even with the service charge, the monthly losses in April-May were larger than in the last quarter of 1969. Declining volume and stock prices have caused revenues to fall off more rapidly than costs. In addition, the severe erosion in stock volume has meant that revenues generated from the service charge have fallen far short of expectations.

The SEC and NYSE staffs agreed to procedures for monitoring the effects of the service charge. Specifically, it was agreed that detailed data would be gathered for 77 firms (including the 50 largest) accounting for 69 percent of member firms' gross income in 1969. These figures permit an extensive analysis of the financial situation of firms doing a public commission business. At this time, complete information has been processed for 74 of the 77 firms for the period from the fourth quarter of 1969 to May, 1970. The 74 firms accounted for 67 percent of the industry's total gross revenue and 65 percent of its security commission income in 1969.

The overall profitability of member firms has deteriorated markedly from the end of 1969 through the spring of 1970. Around two-thirds of the firms in the sample were operating at a profitable level during the last quarter of 1969. In the months of April and May, 1970, two-thirds were showing losses. In other words, one-third of the firms under study have gone from operating in the black to running in the red between the latter part of 1969 and the spring of 1970.

Not only were there progressively fewer firms in the black, but there has been a steady shrinkage inthe dollar amount of their profits. During the fourth quarter of 1969, the firms in the sample earned a net profit of $88.6 million; in the first quarter of 1970, $20.2 million; and in the months of April and May, they lost $28.7 million and $20.6 million, respectively. It may be more instructive to consider these figures on an annual basis. (This also permits a direct comparison of quarterly and monthly figures.) If the fourth quarter 1969 profits were projected for a full year, these firms would have earned $354.2 million. The first quarter profits annualized come to $80.8 million. A sharp contrast is provided by the most recent data. The April and May deficits annualized come to $344.5 million and $247.2 million, respectively.

Due to the heterogeneity of the NYSE membership in terms of business mix and clientele, the overall figures disguise important underlying trends. For this reason, it may be more meaningful to classify the firms according to their type of business. We therefore separated the firms in our sample into three groups on the basis of their average shares per order in 1969: Retail firms, defined as those with average size transactions between 1 and 399 shares; a middle group of diversified firms with average trades between 400 and 999 shares; and institutional firms with an average of 1,000 shares and more.

The service charge was designed to have its greatest impact on the retail firms. The following discussion therefore begins with this group and considers their overall profitability as well as their profits and losses on securities commission business only. The profitability of the securities commission business was obtained by asking each firm for its securities commission income and by allocating each line of expense according to the firm's 1969 I & E proportions.

Retail Firms -- Securities Commission Income (SCI).

The security commission business has remained an unprofitable activity for the 54 firms included in the retail category. In the last quarter of 1969, less than one-third of these firms earned any profit on their SCI activity. During the first quarter of 1970, and in the month of April, about 80% of the retail houses lost money on their public commission business. The May figures look somewhat less dismal, both because volume was above 12 million shares per day and the service charge was collected for the full month. Yet, over 57

percent of the group suffered deficits on SCI business. Had the service charge not been in effect during May, 82 percent of the firms, instead of 57 percent, would have lost money on their commission business.

The dollar amounts of losses suffered by the retail houses on SCI activity are shown in Table II. These firms suffered losses of $42.9 and $83.1 million during the last quarter of 1969 and the first quarter of 1970. In the months of April and May, they lost $23.4 and $9.9 million, respectively. On an annual basis, that is assuming a continuation of the losses for a full year, the fourth quarter losses become $171.5 million. By comparison, the first quarter losses annualized come to $332.5 million. The April and May deficits annualized total $281.2 and $119.1 million, respectively.

The retail firms in our sample received $8.4 million in service charges during April and $16.2 million in May. Had it not been for this service charge, the losses in April would have risen from $23.4 to $31.9 million, and in May from $9.9 to $26.1 million. Thus, even in the month of May, with volume up, the <u>annual</u> deficit would have been $313 million without the service charge -- a deficit much above the $171 million per annum in the fourth quarter of 1969.

The retail firms received over 90 percent of the revenues generated by the service charge. Nonetheless, the amount has been insufficient to eliminate, on average, the losses involved in the retail commission business. At the level of volume in April and May, the service charge provided about two-thirds of the anticipated revenue. But even if all of it had been realized, the firms would have had a hard time breaking even.

<u>Retail Firms -- Overall Profits.</u>

Overall profits for retail firms show an even bleaker trend than SCI activity alone. During the last quarter of 1969, this group earned an overall profit before taxes of $33.2 million. Activities other than commission business provided profits of $76.1 million. However, profits on these other operations have declined to $70 million in the first quarter of 1970 and a deficit of $4 million during May. The service charge is of course justified and needed on the basis of securities commission operations alone. Nonetheless, it should be noted that retail firms are unable to subsidize losses on commission business with earnings from other lines of activity.

<u>Middle Firms -- SCI Business and Overall Profits.</u>

There were 13 firms in the sample which averaged between 400-999 shares per order in 1969. Although their SCI business remained profitable during the periods under study, the trend would have been sharply downward if not for the service charge. Commission profits declined from $6.7 million in the last quarter of 1969 to $4.6 million in the

first quarter of 1970 and $1.4 million in April. In May, the total came to $2.6 million, of which half was accounted for by the service charge. Although these firms received less than 8 percent of the revenues generated by the interim fee, the service charge was crucial in reversing the downward trend in the profitability of their SCI business.

The overall business of these diversified firms shows a much poorer picture. At annual rates, these firms suffered deficits of $32.3 million in April and $48.7 million in May.

Institutional Firms -- SCI Business and Overall Profits.

Seven firms fell into the institutional category. Profits on their commission business have declined since the fourth quarter of 1969. But this trend has been vastly overshadowed by deficits in other lines of activity. Overall, these firms sustained annual rates of losses of $32.8 million in May, compared with $80.1 million in April.

In view of the fact that the service charge is only a slight proportion of the total revenue of these firms, it does not seem appropriate to analyze their financial situation in this connection.

*   *   *   *

On the basis of the above analysis, it is clear that the service charge has been an essential element in preventing an even more serious financial picture developing among the retail firms. Although the service charge has been insufficient to restore profitability, it has served to reduce the losses suffered by these firms on their SCI business from an annual rate of $330 million in the first quarter of this year to $119 million in May. The statistics indicate that the actual cost of the service charge to the public has not been $15 but has averaged less than $10 because of the 50% maximum ceiling imposed. The above data clearly support the need for continuation of the service charge at this time.

TABLE I

NUMBER AND PERCENTAGE OF FIRMS WITH PROFITS AND LOSSES ON SCI

	Quarter Ending December 31, 1969	Quarter Ending March 31, 1970	Month Ending April 30, 1970	Month Ending May 31, 1970
. Firms				
nber with Profits	17 31.5%	10 18.5%	11 20.4%	23 42.6%
nber with Losses	37 68.5%	44 81.5%	43 79.6%	28 57.4%
: Firms				
nber with Profits	12 92.3%	10 76.9%	10 76.9%	12 92.3%
nber with Losses	1 6.7%	3 23.1%	3 23.1%	1 6.7%
:utional Firms				
nber with Profits	7 100.0%	5 71.4%	4 57.1%	5 71.4%
nber with Losses	0 0.0%	2 28.6%	3 42.9%	2 28.6%
:				
nber with Profits	36 48.6%	25 35.5%	25 35.5%	40 54.1%
nber with Losses	38 51.4%	49 64.5%	49 64.5%	34 45.9%

TABLE II

DOLLAR AMOUNT OF PROFITS AND LOSSES ON SCI BUSINESS
(millions of dollars)

	Quarter Ending December 31, 1969	Quarter Ending March 31, 1970	Month Ending April 30, 1970	Month Ending May 31, 1970
Retail Firms				
Actual	($ 42.9)	($ 83.1)	($ 23.4)	($ 9.9)
Annualized	($171.5)	($332.5)	($281.2)	($119.1)
Middle Firms				
Actual	$ 6.7	$ 4.6	$ 1.4	$ 2.6
Annualized	$ 26.8	$ 18.2	$ 17.0	$ 31.7
Institutional Firms				
Actual	$ 16.6	$ 11.5	$ 3.2	$ 4.1
Annualized	$ 66.4	$ 46.1	$ 39.0	$ 49.5
TOTALS				
Actual	($ 19.6)	($ 67.0)	($ 18.8)	($ 3.2)
Annualized	($ 78.4)	($268.0)	($225.6)	($ 38.4)

TABLE III

NUMBER AND PERCENTAGE OF FIRMS WITH PROFITS AND LOSSES ON OVERALL BUSINESS

	Quarter Ending December 31, 1969	Quarter Ending March 31, 1970	Month Ending April 30, 1970	Month Ending May 31, 1970
Retail Firms				
Number with Profits	30 55.6%	16 29.6%	12 22.2%	16 29.6%
Number with Losses	24 44.4%	38 70.4%	42 77.8%	38 70.4%
Middle Firms				
Number with Profits	12 92.3%	11 84.6%	7 53.8%	7 53.8%
Number with Losses	1 6.7%	2 15.4%	6 46.2%	6 46.2%
Institutional Firms				
Number with Profits	6 85.7%	6 85.7%	4 57.1%	4 57.1%
Number with Losses	1 14.3%	1 14.3%	3 42.9%	3 42.9%
TOTALS				
Number with Profits	48 64.9%	33 44.6%	23 31.1%	27 36.5%
Number with Losses	26 35.1%	41 55.4%	51 68.9%	47 63.5%

TABLE IV

DOLLAR AMOUNT OF PROFITS AND LOSSES ON OVERALL BUSINESS
(millions of dollars)

	Quarter Ending December 31, 1969	Quarter Ending March 31, 1970	Month Ending April 30, 1970	Month Ending May 31, 1970
Retail Firms				
Actual	($ 33.2)	($ 13.6)	($ 19.3)	($ 13.8)
Annualized	($132.8)	($ 54.2)	($232.1)	($165.7)
Middle Firms				
Actual	$ 25.8	$ 11.1	($ 2.7)	($ 4.1)
Annualized	$ 10.3	$ 44.5	($ 32.3)	($ 48.7)
Institutional Firms				
Actual	$ 29.5	$ 22.6	($ 6.7)	($ 2.7)
Annualized	$118.1	$ 90.5	($80.1)	($ 32.8)
TOTALS				
Actual	$ 88.5	$ 20.1	($ 28.7)	($ 20.6)
Annualized	$354.0	$ 80.4	($344.4)	($247.2)

For RELEASE Thursday, October 22, 1970 276

Documents 21 & 22

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C. 20549

Securities Exchange Act of 1934
Release No. 9007

The Securities and Exchange Commission today announced that it had reviewed the proposed New York Stock Exchange minimum rate schedule, which it received June 30, 1970, as well as the evidence presented in the public hearings on that subject. As a result of its review, the Commission has concluded that the data submitted in support of the NYSE's proposal does not provide a complete answer to the problem of stock exchange commission rate structure and level. It believes, however, that it would not be in the public interest to leave this subject indefinitely in abeyance and accordingly would not object if the proposed schedules are adopted with the modifications related below, and also upon the understanding that specified steps be taken to provide a better basis for the determination of commission rates.

Generally stated, the Commission has concluded that (i) the proposed increases in rates for round-lot orders of 100 through 400 shares are unreasonable and should be reduced to stated percentages and (ii) that the proposed rate schedule is unreasonable to the extent that it fixes charges for that portion of an order in excess of $100,000. The Commission determined that it would not object to the proposed schedule if it is modified to take into account the Commission's objections noted above. The Commission also indicated that its action is in part predicated upon the need for member firms to adequately service the small investor and, accordingly, conditioned on the understanding that no member firm which traditionally has accepted small customer accounts will impose or continue any limitation on the size of such customer's order or account and that in connection with such business the firm will not charge fees in excess of the proposed rates. The Commission also stated that it expects that the Exchange will take all steps necessary to assure that these revenues will be prudently employed by all of its member organizations to improve their operations and financial position.

To provide a better basis for the determination of rates, the Commission has requested that the Exchange present for the Commission's consideration on or before but no later than June 30, 1971

(1) a new rate structure based on a percentage scale of the money involved in an order;

(2) a proposed revision of the intra-member charges for floor brokerage and clearance; and

(3) a proposal for reasonable non-member access.

Finally, the Exchange was requested to develop and submit a plan by May 31, 1971 for a uniform system of accounts and uniform methods of cost allocation. The Commission's conclusions are set forth in a letter to the Exchange President, Robert W. Haack, the full text of which follows:

Exhibit 35

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

October 22, 1970

Mr. Robert W. Haack
President
New York Stock Exchange
Eleven Wall Street
New York, New York 10005

Dear Mr. Haack:

The Commission has reviewed the proposed New York Stock Exchange minimum commission rate schedule which it received June 30, 1970, and the evidence presented in the public hearings on that subject. As a result of its review, the Commission has concluded that the following segments of the schedule are not reasonable:

(1) Commissions to be charged for orders of 100-400 shares.

The Commission believes that the schedule proposed for orders of 100-400 shares is unreasonable in terms of the percentage increase it represents over the present minimum commission rate schedule and the rate of commissions charged more recently with the imposition of the interim service charge in addition to the present schedule. Investors purchasing this number of shares would be required, under the proposal, to bear an inordinate amount of total commission increase sought by the Exchange. The Commission has determined that increases in these particular minimum commission rates would not be unreasonable if they were reduced in the 100 through 400 share order categories at the $40 per share price level, as shown in the schedule below, with proportionate reductions for other price levels in these share order categories.

Number of Shares	Proposed Increase of	Reduced To
100	50%	37%
200	45%	34%
300	35%	26%
400	25%	20%

(2) Commissions to be charged for portion of orders exceeding $100,000 or more.

The Commission is of the opinion that fixed charges for portions of orders in excess of $100,000 are neither necessary nor appropriate.

Mr. Robert W. Haack

The Commission believes that the remainder of the proposed schedule is not unreasonable and that the schedule, if adopted as modified as suggested in (1) and (2) above, will afford member firms an income consistent with their interests and the interests of investors and the public at large. The Commission's action is in part predicated upon the need for member firms to adequately service the small investor and, accordingly, is conditioned on the understanding that no member firm which traditionally has accepted small customer accounts will impose or continue any limitation on the size of such customer's order or account and that in connection with such business the firm will not charge fees in excess of the proposed rates. The Commission also expects that the Exchange will take all steps necessary to assure that these revenues will be prudently employed by all of its member organizations to improve their operations and financial position.

Consistent with the representations made by the Exchange of the need for continuous review of commission charges, the Commission will re-examine the level and structure of rates for the period following July 31, 1971. For this purpose, the Commission requests the Exchange as soon as possible but no later than June 30, 1971, to present for Commission consideration a new rate schedule of scaled percentage charges based upon the amount involved in an order. Such a rate schedule should be fair, readily understandable and not present undue problems of administration.

The Exchange also is requested on or before that date to present a plan for reasonable economic access to the New York Stock Exchange for non-member broker-dealers. Further, the Exchange is requested on or before June 30, 1971, to submit appropriate revisions relating to intra-member rates.

Finally, the Commission considers it to be necessary to the continuance of a system of fixed rates for exchange transactions that a uniform system of accounts as well as uniform and adequate methods of cost allocations be implemented. Accordingly, the Exchange should present at the earliest practicable date and not later than May 31, 1971 a plan for such uniform accounting system. At the same time, the Commission will be considering such a plan for all registered broker-dealers.

If the Commission or its staff can be of assistance to the Exchange in regard to our suggested modifications of its proposed schedule, please let us know.

Sincerely,

Hamer H. Budge
Chairman

CHAIRMAN'S OFFICE
MAILED
FEB 10 1971

Mr. Robert W. Haack
President
New York Stock Exchange
Eleven Wall Street
New York, New York 10005

Signed by:

Dear Mr. Haack:

As your February 3, 1971 letter indicates, in early January the Commission advised representatives of the Exchange that delay in implementation of the elimination of minimum commission rates on large orders for the purpose of enabling the Exchange to undertake a study of whether such action should be taken was unacceptable.

You have described in some detail concurrent and subsequent activities of the Exchange's Committee on Membership Qualifications concerning institutional membership. We see no reason why the Costs and Revenues Committee's or the Board's resolution of the competitive rate issue "must logically await the development of definitive recommendations" respecting institutional membership. As you know, we did not suggest in our October 22, 1970 letter, nor do we now suggest that Exchange action on the implementation of competitive rates for institutional size orders should await resolution of various issues referred to in the Commission's October 22 letter or of questions concerning Exchange Rule 318.

Accordingly, particularly in view of the time that has elapsed since the Commission's letter of October 22, the Commission believes the Exchange should take immediate action to implement, by April 1, 1971, the Commission's finding that fixed minimum commissions on institutional size orders are neither necessary nor appropriate. In light of substantial changes in trading patterns on the New York Stock Exchange and to gain further experience with competitive rates, the Commission will not object to the Exchange's commencing competitive rates on portions of orders above a level not higher than $500,000 rather than at the $100,000 figure mentioned in our October 22 letter.

Sincerely,

Richard B. Smith
Commissioner

SRappaport/bmj

For RELEASE Thursday, March 11, 1971

Securities and Exchange Commission
Washington, D. C. 20549

Securities Exchange Act of 1934
Release No. 9105

The Securities and Exchange Commission today announced that it had yesterday sent a letter to the New York Stock Exchange reaffirming the conclusion in its March 8, 1971 letter that the continuation of minimum commission rates on portions of orders above $500,000 beyond April 2, 1971 would be unreasonable and would be contrary to the Exchange Act. The Commission requested the Exchange to so advise its members and stated that the conclusions reached in the Commission's March 8 letter are not altered by the timing of the Exchange's procedural steps to amend its constitution or their outcome. The Commission's March 8 letter, the New York Stock Exchange's response of March 9 and the Commission's reply of March 10 follow:

March 8, 1971

Mr. Robert W. Haack
President
New York Stock Exchange
Eleven Wall Street
New York, New York 10005

Dear Mr. Haack:

As you will recall, on November 9, 1970 you wrote to the Commission stating the Exchange's assumption that the Exchange and its members would have a reasonable time to thoroughly study the conclusion in the Commission's October 22, 1970 letter that minimum commission rates on large, institutional size orders are neither necessary nor appropriate. On February 10, 1971 the Commission wrote to you that we would not object if competitive rates were to apply to the portion of orders which exceed a cut-off point of not more than $500,000 and stated that the Exchange should take immediate action to implement such competitive rates by April 1, 1971.

We understand that the Exchange and its members have very recently been addressing themselves to a number of questions relating to competitive rates which are not yet resolved. Of course, the matter of competitive rates and related questions have been before the Exchange and its membership since October 22, 1970. The Commission appreciates that, as in other situations such as when the surcharge was adopted, the Exchange necessarily will be able to take appropriate interpretive action after as well as before rule changes are adopted.

the Commission has previously advised the Exchange, the time to implement such competitive commission rates would not extend beyond April 1. However, if operational problems would result from the change occurring during the middle of a business week, the Commission will not object to the Exchange retaining minimum commission rates on such orders through April 2, 1971. Accordingly, your members should be advised promptly that the continuation of minimum commission rates on those portions of such orders beyond that time would be unreasonable and would be contrary to the Exchange Act.

Sincerely,

FOR THE COMMISSION

Hugh F. Owens
Commissioner

March 9, 1971

The Honorable Hugh F. Owens
Office of The Commissioner
Securities and Exchange Commission
500 N. Capitol Street
Washington, D. C. 20549

Dear Commissioner Owens:

As per our discussion with the Commission yesterday morning, and in response to your letter of March 8, we appreciate the opportunity to outline to the Commission what the Exchange is doing to implement competitive rates on orders exceeding $500,000.

Before such a change can be made it is necessary to amend Article XV of the Exchange Constitution dealing with "Commissions and Service Charges." Article XX of the Exchange Constitution contains the procedure which the Board of Governors must follow in proposing amendments to the Constitution. Amendments to the Constitution can only be approved or disapproved by the Exchange membership.

Article XX of the Constitution provides that every proposed amendment to the Constitution must be presented in writing at a regular meeting of the Board or at a Special Meeting called expressly for receiving it. Upon presentation, the proposed amendment must be laid upon the table for at least two weeks. After the minimum two week posting period, the Board of Governors may approve the amendment and submit it to the membership for a vote.

Article XX also provides that the time for balloting shall expire at the end of two weeks following approval and submission of the proposed amendment by the Board of Governors, unless at the end of the two week period less than a majority of the then members have participated in the balloting.

Accordingly, a minimum period of four weeks is required, assuming membership approval, to amend the Exchange Constitution. In addition, Exchange Rule 26 provides that in the case of amendments to Article XV of the Constitution "the text of such amendment shall be posted on the bulletin board, distributed to the membership and publicly announced at least 30 days before action thereon is taken by the Board of Governors." In other words, Rule 26 has the effect of extending the minimum posting period for amendment to the commission Article of the Constitution to 30 days rather than the two weeks required for amendments to other Articles of the Constitution.

The timetable which we have been following, as explained to the Commission at the meeting yesterday morning, calls for a series of meetings to be held with various groups dealing with aspects of the problems which have been raised in connection with the new structure of commission rates which will come into being with the establishment of competitive commission rates. A meeting was held yesterday with representatives from the operational side of the business, and meetings were held today with counsel on the legal questions which have been raised.

A meeting is to be held on intra-member rates in view of the Commission's letter of March 2, which we received last Wednesday, notifying the Exchange that it expected that fixed intra-member rates above the $500,000 level would also cease to apply.

A meeting of the full Costs and Revenues Committee is scheduled for this Thursday, March 11, to review the various recommendations which will hopefully be developed as a result of the consideration of the various problems which are being explored.

We recognize, as the Commission states in its letter of March 8, that the Exchange will be able to take appropriate interpretative action after as well as before rule changes are adopted. However, here we are dealing with a new structure of commission charges which, in effect, overturn commission rates and practices which have existed in the securities industry for many, many years. In our review we have been attempting to visualize the practices which might arise under a scheme of competitive rates. It may be that some of these practices will be inimical to the public interest and therefore must be addressed by the Exchange prior to the implementation of a new commission structure rather than to react to practices after abuses occur.

We are not, as has been repeatedly emphasized to the Commission and its staff, proposing that the implementation of competitive rates be delayed for the sake of delay. We do feel, however, that as thorough an exploration of the problem areas as is possible should be done in the shortest possible time.

As we stated at the meeting with the Commission yesterday, we are proposing that a proposed amendment to the Exchange Constitution be laid upon the table at the policy meeting of the Board of Governors on March 18. As you know, out-of-town members and the three public members of the Board of Governors do not ordinarily attend the weekly meetings of the Board and major matters are reserved for the Board at the policy meeting held on the third Thursday of the month.

When the proposed amendment is laid upon the table at the policy Board meeting on March 18, we also plan to propose that the Board repeal Exchange Rule 26 and thereby shorten the posting period from 30 days to two weeks. After the expiration of the minimum two week posting period, we will move that the Board approve the proposed amendment and submit it to the membership for balloting. As explained previously, the minimum two week balloting period would expire on Thursday, April 15, if this schedule is adhered to.

We have asked the Exchange's counsel, Milbank, Tweed, Hadley and McCloy, for its opinion on the legal impact of the last sentence of your letter of March 8, 1971, before any notice is sent to the Exchange membership.

We hope that the Commission appreciates that we are working diligently on the questions raised by the implementation of a scheme of competitive rates and that the Board of Governors of the Exchange must, absent appropriate commission action under Section 19(b) of the Securities Exchange Act of 1934, adhere to the requirements of the Exchange Constitution in effecting changes in commission rates.

This means that it will not be possible for the Board of Governors, acting under the requirements of the Exchange Constitution, to implement competitive rates on orders exceeding $500,000 prior to April 1 or April 2, but that such rates can be made effective as early as April 16. However, since April 16 is a Friday, for operational reasons it would be advisable to make the change effective on the following Monday, April 19.

In view of the magnitude of the proposed change, the prospect of the continuation of the existing system of fixed minimum commission rates for ten additional trading days beyond April 2 does not seem unreasonable. Whether the Commission's position is legally correct or not, it does not seem that much is accomplished by exposing the member organizations and the exchanges to potential lawsuits, which may be litigated for years, to accelerate the implementation of competitive rates on larger transactions by a few days.

We hope that the Commission will agree and advise us that it has no objection to the Exchange's retaining the existing minimum commission rates through April 16. Let me assure you that Chairman Lasker, Vice-Chairman DeNunzio and I have every intention of following through with this schedule on March 18, if the Commission approves.

Very truly yours,

Robert W. Haack

March 10, 1971

Mr. Robert W. Haack
President
New York Stock Exchange
Eleven Wall Street
New York, New York 10005

Dear Mr. Haack:

This is in reply to your letter of March 9, 1971 in which you respond to our letter of March 8 with respect to commission rate structure by describing the action which the Exchange has taken and proposes to take pursuant to various provisions of your constitution to bring about a modification of Article XV of the constitution to introduce competitive commission rates on that portion of orders which exceeds $500,000. It expresses the view that all of these procedural steps cannot be concluded prior to April 16 or perhaps April 19.

If this were an initial proposition which was first called to your attention on March 8, we would endeavor to accommodate your concern. However, the Commission's determination, following extensive hearings, was brought to your attention on October 22, 1970 and on February 10, 1971 you were advised that action should be taken by April 1. Procedural steps required by your constitution could have been initiated earlier, but we are not attempting to determine the timing of the procedural steps you take pursuant to your constitution. We do, however, adhere to the statement in our letter of March 8 that the continuation of minimum commission rates on portions of orders above $500,000 beyond April 2, 1971 would be unreasonable and would be contrary to the Exchange Act and we believe that you owe it to your members to so advise them. We

[illegible]sume that in view of this, the procedural steps under your constitution will be taken as rapidly as possible, but the conclusions reached in our letter of March 8 are not altered by the timing of those steps or their outcome.

Sincerely,

FOR THE COMMISSION

Hugh F. Owens
Commissioner

RVA

Statement of the Securities and
Exchange Commission

on the

FUTURE STRUCTURE OF THE SECURITIES MARKETS

February 2, 1972

SECURITIES AND EXCHANGE COMMISSION
MCMXXXIV

Statement of the Securities and
Exchange Commission

on the

FUTURE STRUCTURE OF THE SECURITIES MARKETS

February 2, 1972

MEMBERS OF THE COMMISSION

WILLIAM J. CASEY, of New York, *Chairman*	June 5, 1974
HUGH F. OWENS, of Oklahoma	June 5, 1975
JAMES J. NEEDHAM, of New York	June 5, 1973
A. SYDNEY HERLONG, JR., of Florida	June 5, 1976
PHILIP A. LOOMIS, JR., of California	June 5, 1972

A. JONES YORKE, *Executive Director*
RONALD F. HUNT, *Secretary of the Commission*

STATEMENT BY WILLIAM J. CASEY, CHAIRMAN OF THE SECURITIES AND EXCHANGE COMMISSION, UPON RELEASE OF THE COMMISSION'S POLICY STATEMENT ON THE FUTURE STRUCTURE OF THE SECURITIES MARKETS—FEBRUARY 2, 1972

The Commission is today issuing a policy statement which undertakes to speak not only to the subjects specified in the hearings held at the end of last year, but also to other still unresolved questions thrashed out in the Commission's hearings going back to 1968. Indeed, our statement on the future structure of the securities markets is the culmination of hearings and studies extending over the last decade. Yet, it is a beginning, for it points the way for the future, a future in which the securities industry and markets will perform an even more vital function in the economy of our country. Beyond that, we visualize the role that this industry has performed in our economy broadening to all the free economies of the world. In reaching our conclusions we tried to preserve that which is good to provide a foundation for improvement in the future.

The members of the Commission have a remarkable degree of unanimity in our view of what the securities markets should look like in the future and on what the Commission should do to guide and assist in evolving in this direction. This statement expresses the unanimous view of all the members of the Commission except that Commissioner Owens takes a different view at one point on the best method of achieving the goals which we all share. All of us fully agree on all the objectives and almost all the means of working toward markets which are public markets, staffed by professionals, retaining the confidence of individual investors that their interests are not neglected, and providing necessary depth and liquidity, by unification and by reliance on competition within the market structure, not outside it.

The policies which they Commission is adopting in this report focus on three paramount objectives. First, we want to make the relationships in the securities markets and their operation as simple, as direct, and as open as we can. They have become too complicated with too many transactions structured, contrived, and carried out in a particular place or in an unnatural way or without public discolsure—sometimes all three. The steps spelled out in this report are designed to put competition to work for the investor, to move away from reciprocal and rebative practices, to bring transactions into the open and to focus attention where it should be—on where and how to get the best price for a buyer or seller of securities. We believe that investor confi-

dence will be strengthened as professional attention is reconcentrated on finding the best market, providing information and judgment for the investor, and getting him the best net result, unclouded by considerations relating to the rebating, the redirection and the recapturing of commissions.

The second is to adapt the securities markets to growing institutionalization, with its increased tempo and magnitude of transactions, while maintaining the confidence and the participation of the individual investor. This will require absorbing more and larger blocks from institutions without creating spreads and price gyrations which frighten the small investor and while maintaining the depth and liquidity which has attracted investors from all over the world to our markets. That is the biggest challenge we face. We believe it can be met by bringing all offers and bids together into a single nationwide market system, by making quotations and transactions known in all parts of the country, by bringing all market-makers to a central system in which they compete under rules assuring responsibility, by giving the public an opportunity to participate in, or by protecting smaller holdings from, the discounts and premiums at which large blocks trade. This is a very difficult, technical and sensitive problem. The Commission and the staff will work closely with professionals in the securities industry to further evaluate and implement these key aspects of the central market system.

Our third emphasis is on making the professional service available to investors as efficient and economic as possible without diluting standards of service and responsibility. We all believe strongly that the market system of the future should be operated by professional brokers and market-makers dedicated primarily to serving the public in these capacities. We believe it is harmful to public confidence and to the kind of professional responsibility which should characterize our securities markets for brokerage firms to have the privilege of exchange membership without the obligation, the responsibility and primary purpose of serving a sector of the public other than their own affiliates. To this end, the Commission will use its authority as promptly as possible to eliminate the rebative and reciprocal practices specified in our report and to eliminate exchange memberships which do not clearly have a primary purpose of serving public customers. Commissioner Owens believes that these objectives require the total prohibition of all transactions by institutionally affiliated brokerage firms for their institutional affiliates. The other Commission members are not prepared to go that far at this time. All of us believe that the Congress should again review this and other conflicts of interest to weigh any deficiencies in the present method of controlling them by a combination of disclosure and fiduciary obligation against the impact of complete separation of function on the strength of the industry and its service to the public.

The Commission will act as promptly as possible to extend competition in commissions and market-making while maintaining the obligation of determining suitability in the sale of securities, encouraging the performance and broad dissemination of investment research and fostering efficiency and

financial responsibility in brokerage firms. Specific steps to be taken are spelled out in our policy statement. (See page 24)

STATEMENT OF THE SECURITIES AND EXCHANGE COMMISSION ON THE FUTURE STRUCTURE OF THE SECURITIES MARKETS

February 2, 1972

The Commission is issuing this general statement of policy at this time so that the Congress, the investing public and the securities industry fully understand the Commission's views on the present status of the securities markets and the direction in which the public interest requires that they evolve in the future.

The Commission has completed a series of hearings and special studies extending over a period of three and a half years. The latest set of hearings, which began on October 12, 1971, dealt primarily with questions related to the structure, organization and regulation of the securities markets. Earlier hearings dealt primarily with questions relating to commission rates and give-up practices. The Institutional Investor Study, submitted to Congress on March 10, 1971, accumulated extensive data on the burgeoning of financial intermediaries such as banks, mutual funds, pension funds and insurance companies, often referred to simply as institutions, and their growing impact on the securities markets. Finally, the "Study on Unsafe and Unsound Practices of Brokers and Dealers," mandated by the SIPC legislation and submitted to Congress on December 28, 1971, dealt with questions relating to the operational efficiency and financial responsibility of firms making up the broker-dealer community.

This policy statement is based on the data and testimony accumulated in this entire process of hearings and studies. It draws on the Commission's analysis of that data, as well as on the experience gained through its years of administering the securities laws.

The continued strength and vitality of the American securities markets are essential to the economic welfare of all Americans. We have the best capital market in the world. It attracts investment not only from millions upon millions of Americans and the financial institutions responsible for their savings but from investors in all corners of the world. This attraction comes from the depth and liquidity of our market, from the quality of the information and research available about our companies and from the standards of service and responsibility to investors which prevail in our investment community.

Yet disturbing problems have developed. Institutions entrusted with rapidly increasing amounts of the nation's savings have sharply increased the amount

of trading they do in the equity markets. Much of this trading is directed to markets where it is possible to rebate or redirect commissions and where the public is not aware of the prices or the volume involved. Our securities markets depend on public confidence and public participation. In our study on unsafe and unsound practices we have reported on steps taken to assure the public of the financial responsibility of those who serve investors and steps recommended to fully utilize modern technology in effectuating securities transactions.

In this policy statement we address what can be done now to assure the public that market structure is responsive to its needs. The public is entitled to disclosure of trading volume and prices in all markets. It is entitled to have competition focused on providing the best combination of price, service and transaction cost. It is entitled to regulation designed to assure fair, open and direct dealing and, to the extent feasible, to maintain price stability and market depth.

The policies set forth in this statement are designed to deal with the following specific problems which have developed in our markets:

1. With the growing institutionalization of the market, large blocks have come to account for close to 20 percent of the volume. The auction market and the specialist system have not been able to absorb this pressure without the assistance of other dealers.

2. Widespread attempts to avoid the fixed commission rate or to use commission payments as compensation for other services unrelated to the brokerage function have resulted in a dispersion of trading to the point where an investor's ability to know whether he has obtained the best execution of his order is threatened and the potential depth and liquidity of the marketplace have been impaired.

3. Reciprocal practices have proliferated to the point where they, along with restrictions on brokers' access to markets, have clouded disclosure and responsibility in the execution of orders for listed securities.

4. An increasing amount of trading in listed securities is not disclosed to the public.

The policies set forth herein are also designed to preserve and strengthen these capabilities which our markets have developed:

1. The remarkable ability of block positioners and other market-makers, including some specialists, to handle the large offerings and bids which come from the institution.

2. The network of securities firms capable of providing needed services to the public and mobilizing capital from all parts of America.

3. The high standards of fiduciary responsibility with which most securities firms serve public customers.

4. The professional investment research capabilities which have been developed to guide investor's capital on an informed basis and in the light of potential risk and reward.

In brief, these policies are designed to maintain depth and liquidity by

concentrating trading in a central market system in which competing market-makers will generate the best prices, in which comprehensive disclosure will show how and where to obtain the best executions, to which all qualified broker-dealers will have access, and in which every investor can have the assurance that the professionals acting as his agents will put his interests before theirs. At the same time, we seek to move towards a structure of rules as to commissions and related matters which will eliminate gimmickry and minimize distortion and indirection in the trading of equity securities.

As things now stand, we believe that fundamental changes in trading practices, particularly the institutionalization of trading, and the nature of the prevailing commission rate structure have combined to produce fragmentation among the components of the marketplace for listed securities. Similarly, the trading of increasingly large blocks of securities has cast doubt on the ability of the marketplace to continue to provide the liquidity and price continuity which have made our markets function so well.

In evaluating alternative policies and introducing change the most critical task is the designation of objectives. In this case, our overall objective is to encourage the development of capital markets with the ability to mobilize capital effectively and in so doing to allocate resources efficiently, establish realistic and fair valuation of investments, provide necessary liquidity for securities and produce satisfactory investment services and protection for those who commit their savings to the securities markets, in whatever form. We believe these objectives can be attained by reliance on economic incentives and market mechanisms, consistent with our national policy of favoring free and open competition, except in those specific instances where the regulator's duty to protect the public dictates a limited departure from free market principles.

A CENTRAL MARKET SYSTEM

In order to maximize the depth and liquidity of our markets, so that securities can be bought and sold at reasonably continuous and stable prices, and to ensure that each investor will receive the best ossible execution of his order, regardless of where it originates, it is genera..y agreed that action must be taken to create a single central market system for listed securities. The Commission in its letter transmitting the Institutional Investor Study to Congress called for a central market system with open access by all qualified brokers and market-makers. This represented something of a shift in the historic position of the Commission, which over many years, extending from before World War II to at least the Special Study Report of 1963, tended to favor competing but separate markets. This shift resulted from technological developments which made it possible to tie markets together so that one could foster competition within a central market rather than among separate competing markets and also from the need to strengthen the existing market structure, including increased market-making capacity within the structure, in order to cope with the pressures created by the growth of institutions and

the volume of their trading. This central market system must be one which will attract and reflect all bids, offers and market-making activity in order to maintain maximum liquidity and depth.

The term "central market system" refers to a system of communications by which the various elements of the marketplace, be they exchanges or over-the-counter markets, are tied together. It also includes a set of rules governing the relationships which will prevail among market participants. To mandate the formation of a central market system is not to choose between an auction market and a dealer market. Both have an essential function and both must be put to work together and not separately in the new system.

Doing this should achieve the twin objectives of centralizing all buying and selling interest and maximizing market-making capacity. While the Commission believes it is important that a tandem central market system also evolve for unlisted securities, and recognizes that significant strides are being made in this direction through NASDAQ, this report will concern itself only with such a system for listed securities. We nonetheless note our satisfaction with the manner in which the NASDAQ communications system has been operating and intend to continue to monitor its operations and development in order to determine whether any modifications may be necessary as the evolution of a central market system progresses.

The national market in listed securities is presently divided between stock exchanges and the third market, with a relatively insignificant amount of trading occurring directly between investors without any intermediation. A central market system would internalize within that system, and make visible to the investing public, the competition which now takes place among the separate exchange markets and between all of them and the third market. The competition which now exists is not always focused on the best brokerage services obtainable but is often based as well on the ability to divert part of the commission involved in a transaction to the interests of those who initiate it and which are not necessarily the same as those of the beneficial parties involved. The trades resulting from this competition and the arrangements it spawns are not always publicly disclosed.

The central market system we look towards should be designed not only to strengthen competition but to make its operation direct and comprehensible and its results fully public. It would entail, among other things, the following elements:

1. Implementation of a nationwide disclosure or market information system to make universally available price and volume in all markets and quotations from all market makers.

2. Elimination of artificial impediments, created by exchange rules or otherwise, to dealing in the best available market.

3. Establishment of terms and conditions upon which any qualified broker-dealer can attain access to all exchanges. (Progress in this direction has already been achieved by a provision for a 40 percent discount from prescribed commission rates for brokers who are not

members of the NYSE. Experimentation with this access provision may lead to further proposals for greater access.)

4. Integration of third market firms into the central market system by including them in the disclosure system (even though initially they would report principal trades on a net basis while exchange trades do not give effect to commissions) and making them subject to appropriate market responsibilities and other regulatory requirements commensurate with the benefits they may realize.

Before discussing these elements in more detail, two other matters related to development of the system are noteworthy. As the system evolves towards general access to exchange facilities it may, depending upon the nature of such access, become appropriate to provide for compensation to seat holders who invested in their seats with the reasonable expectation that such access would remain strictly limited. This could be done by means of a transaction surcharge or some form of tax relief, as the Department of Justice has suggested in its statement recently filed with the Commission. Furthermore, as the central market system evolves, changes may be desirable in the nature and function of the self-regulatory organizations. We anticipate that during the developmental stages the self-regulatory organizations will make changes appropriate to the new system. It is not necessary, however, to attempt to design at this time a self-regulatory structure for a system, the outlines of which are still not sharply defined.

A Comprehensive Disclosure System

As indicated above, an essential step toward formation of a central market system is to make information on prices, volume and quotes for all securities in all markets available to all investors, so that buyers and sellers of securities, wherever located, can make informed investment decisions and not pay more than the lowest price at which someone is willing to sell nor sell for less than the highest price a buyer is prepared to offer. Such a communications system would thus serve to link the now scattered markets for listed securities.

Actions towards establishing such a system has already been initiated by a working committee formed by the industry for this purpose. It is expected to progress rapidly, assuming that the heterogeneous components of the securities industry continue to demonstrate a homogeneous resolve. The committee has met to discuss alternative approaches and recently gave the Commission a progress report on its initial deliberations. The Commission will monitor the progress of the committee (and its expanded successor discussed below) actively to ensure that the common goal is attained as swiftly as possible.

To the extent the communications system will contain substantially real time information on quotations and completed transactions, existing rules must be broadened and reshaped to protect the public against any manipulative abuses, such as certain kinds of short selling, to which such systems may be subject. Technological means must be found to bring together promptly

transactional information from all markets and, if feasible, to present it on a single tape. Because of legibility problems, it may be desirable to develop instead a tape for very actively traded securities and to supplement it for less actively traded securities with a separate tape or a recall system which would provide data on last sale, cumulative volume and current quotes. Alternatively, a tape might be developed which would contain *all* desired information but which could be viewed on a selective, though real time, basis.

In addition to developing a composite transactional tape, steps must be taken to implement a composite quotation system. The technology and hardware for such a system are said to be available, and any remaining regulatory problems should be promptly worked out so that the system can attain its objective of providing quotations which are truly comparable, notwithstanding the different assumptions on which they may be based.

The Commission plans to work in conjunction with the industrys' committee to take all appropriate steps to achieve the foregoing as expeditiously as practicable.

As a concrete preliminary step the Commission will promptly promulgate rules under Section 17(a) of the Exchange Act to require that by the end of each day (or more frequently if feasible) price and volume information on each listed security be collected by each stock exchange and, in the case of third market trading, be reported by broker-dealers to and be collected by the NASD, under appropriate procedures and safeguards. Such rules would provide for release of the data by the end of each day to the public news media including newspapers and, when feasible, to the composite or combined ticker or recall system and automated selective display system referred to previously. This will make it possible for investors to know aggregate trading volume and price ranges in a particular listed security in all markets in which it is traded. It is hoped that the media will cooperate with the Commission and the self-regulatory organizations to modify present reporting methods to include this additional information. In any event, this information will be made publicly available as soon as possible, and the Commission looks forward to substantial progress toward the formation of a real time comprehensive market disclosure system before the end of the year.

Rules for Competing Market-Makers

A central market system, primarily through its communications network, can maximize the opportunity for public orders to match each other and be executed in classic auction market fashion. In addition, such a system can greatly increase the depth and liquidity of the marketplace by maximizing market making capacity; that is, the ability and willingness of dealers, including specialists, market-makers and block positioning firms, to buy and sell securities for their own accounts on occasions when the other side of a public order is not readily available. This can be done by encouraging all such dealers to compete actively within the system, without any artificial

restraints between component markets, to provide the necessary buying or selling power on such occasions.

It must be recognized that when market professionals are permitted to deal for their own accounts with the public, prophylactic rules are required to avoid overreaching and other abuses. Similarly, as a condition of allowing professionals the right to represent and deal with the public in the market system, these professionals should be prepared to assume certain responsibilities in respect of the liquidity and orderliness of the market.

The Commission believes that the liquidity needs of individual and institutional investors can best be provided by policies fostering the development of competition among dealers who are specialists, market-makers and block positioners. Such competition will mitigate the very difficult problem which now xists of developing and enforcing rules designed not only to prevent specialists from abusing their privileged position, but also to motivate them to perform satisfactorily under widely differing circumstances and in the light of varying risks and pressures. Nevertheless, the Commission recognizes that certain rules must be applicable to the competing specialists, third market maker and block positioning firms that will be the heart of the central market system. Such rules will be necessary for three reasons. First, not all listed securities have the trading volume and investor interest necessary to provide effective competition among market-makers (a very large proportion of listed securities trade fewer than, say, 1,000 shares a day). Second, even with the presence of competing market-makers, minimum standards are needed to assure that competition will exist in fact, not just in appearance. Third, it has long been recognized that the regulatory and self-regulatory bodies must help assure that such market-makers do not take unfair advantage of public investors.

Such rules and responsibilities can best be specified in detail by another working group formed for this purpose. This group will deal with problems such as the following:

1. How can we assure that trading by dealers is stabilizing rather than destabilizing in nature? Can this be controlled by standards more meaningful than the "tick test", including, for example, a daily net balance test?

2. To what extent, if any, should there be modifications of the existing system under which specialists are both obligated and limited to making markets in a specified group of securities, while block positioners endeavor to provide a market for almost any security in which an institutional customer has a buying or selling interest, and third market makers perform in a manner somewhere in between? To the extent that this difference in functions is preserved, what rules are appropriate in connection with each such function?

3. What standards of financial soundness should be applied to market-makers in realtion to the number and the size of the markets they maintain as well as to whether or not they carry customers' accounts?

4. Who should have access to information about limit orders and are any restrictions necessary or desirable on dealings between specialists or other market-makers and institutions? It is the Commission's present view that (*a*) competing market-makers should have access to the book (or books), although this might require that it be made public, and (*b*) the ability to deal directly with institutions contributes substantially to a market-maker's abiltiy to find demand and supply (increasing his willingness to take positions and thus improving liquidity), and the presence of competing market-makers would reduce the likelihood of the abuses which gave rise to the existing restrictions on such dealings.

General

We have not attempted at this time to decide certain questions which, in our view, can appropriately be resolved only when the central market system has evolved further. These include such matters as whether trading in listed securities should be restricted to that market system, and whether institutions should be required to limit their transactions in listed securities so that market system rather than doing business directly with each other.

Block Trading

Much concern has been expressed about the market impact of the manner in which institutions acquire and dispose of large positions in listed stocks. The ever-increasing proportion of trading in listed securities accounted for by blocks has taxed the capacity and willingness of specialists, as well as other market makers, to absorb large blocks. While the Institutional Investor Study found that on an overall basis and over extended periods of time—usually about a month—institutional trading did not lead to instability in the market, it appears that such instability does occur frequently in the short run. The impact of institutional trading in particular instances may thus be felt by the markets in general and public investors in particular through substantial fluctuations in the value of their holdings, whether as individuals or through pools of invested capital.

It is in the interest of all concerned, including investors of all sizes, corporate issuers and broker-dealers, that institutional trading not be permitted to deprive our capital markets of their basic liquidity and orderliness. A relatively small number of brokerage firms specializing in block transactions have to date performed a remarkable service in maintaining liquidity for large blocks and minimizing their impact on the public marketplace, but there can be no assurance that they will continue to do so. We have been told that lowering the level at which commission rates are subject to negotiation would deprive the block firms of some of the commission "cushion" they employ to reduce their risk of loss on blocks they temporarily take into inventory to facilitate block trades. Their ability to handle large blocks would thus be diminished, which would result in larger discounts and premiums in the movement of large blocks. Accordingly, ways must be found to ensure that these disruptions in the manner in which securities are priced in the market-

place are minimized, at least to the extent they are a result of liquidity preferences and not in response to information generally available to public investors.

A wide range of approaches has been suggested. One type of proposal is directed at decreasing the volume of block trading by imposition of limitations on the ability of institutions to change positions, or of market makers and block positioners to assist institutions to change positions, rapidly in circumstances where the market impact is likely to be severe. Another type of proposal would accept the possibility of greater price gyrations from institutions' block trading and would focus on finding ways to enable the public to participate in the block premiums or discounts. A third type of modification would recognize the fundamentally different nature of block transactions, as distinguished from normal retail auction transactions and, with the aim of avoiding retail market price fluctuations, would accord them separte treatment. For example, blocks might be crossed and reported on a tape but not interfaced with the retail auction process; that is, limit orders on the specialist's book woud not participate at all.

The foregoing proposals all raise very difficult questions and involve competing theories as to the kinds of markets that are most efficient and fair.

We would be reluctant to see any restriction on the liquidity of large blocks. Yet the cost of such liquidity may be greater price fluctuations. If greater price fluctuations, springing from the desire on the part of institutions to have instant liquidity, are to affect the value of individual holdings, directly or in pools, perhaps the public should have the opportunity to participate in resulting discounts and premiums. It also may be that requiring institutions to reflect the size of their holdings (through haircuts) in valuing their port folios would result in a better balance between the propensity to accumulate large blocks and the expectation of instant liquidity. Better rules, procedures and incentives for positioning and redistributing large blocks may contribute to the resolution of these difficult problems.

An additional working group will be created to study and recommend rules needed to improve the handling of large blocks. Reports on the respective merits of the various approaches, and related proposals for implementation, will then receive thorough consideration by the Commission, which will consider both the problems and the suggested changes in the context of the central market system that will be evolving.

QUALITY OF SERVICE TO THE INVESTOR

Section 2 of the Securities Exchange Act of 1934 states that "transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are affected with a national public interest". Just as surely the brokers and dealers who execute such transactions are so affected. They are entrusted with money and securities belonging to investors of all sizes, including those whose savings are invested indirectly through large pools of funds. It is therefore crucial that these brokers and dealers conduct their

activities in a manner consistent with the high standards imposed upon them by the Act and the needs and expectations of the investing public.

An important step toward eliminating the many discredited practices which caused concern about the ability and willingness of some members of the broker-dealer community to live up to such standards was the issuance of the Commissions' recently released study of unsafe and unsound practices, referred to above. Of equal importance are questions as to the kinds of entities which should be permitted to act as broker-dealers, the kinds of activities in which they should be permitted to engage, the manner in which charges for their services should be determined and the form which payment of such charges should take. All of these issues must be resolved so as to insure that the public can be confident of dealing with an even stronger broker-dealer community capable of reliably performing the services its customers have a right to expect for charges that are fair to all concerned.

In evaluating policy on these matters, there are several critical elements to keep in mind. One is that what is being bought and sold is a personal service—increasingly, we hope, a professional personal service. A recommendation to buy or sell a security and the execution of most orders of any size require critical elements of responsibility, judgment, skill, experience, knowledge of people and markets, information and research relating to the security. Much of the effort of the industry and the Commission over past years has been to improve the standards of responsibility and professionalism with which brokerage service is made available. Potential savings in the cost of this service are quite small in relation to the amount at stake, well under a penny on a dollar in most cases. We have observed that the cost of this service is frequently considerably lower in relation to commissions prevailing in connection with other forms of investment. We doubt that stock market commissions are significantly higher than any other investment commission, particularly when weighed in the light of the number and the complexity of the elements entering into a sound investment decision and a satisfactory execution with respect to equity securities.

This is not to say that it is not desirable that transaction costs be reduced or that it will not be possible to reduce them. We are hopeful that steps to be taken on competitive rates and on the creation of a modernized nationwide securities transfer system will result in lower transaction costs. But we would be concerned if reduced transaction costs were accomplished at the price of deterioration in standards of service and responsibility, or if apparent reductions in commissions result in higher transaction costs owing to increased spreads and fluctuations, or if investment managers made visible commission cost an exclusive criterion in deciding where to place their executions and ignored, through carelessness or fear of criticism, the elements of skill, knowledge, judgment and advice. The remaining sections of this statement set forth our views on these and related questions.

Commission Rates

The problems attributable to fixed minimum commission rates on in-

stitutional size stock exchange transactions have led to a series of modifications in the commission rate structure during the last few years. Economies of scale were first given recognition in the rate structure on December 5, 1968 when a volume discount was initiated for the portion of orders exceeding 1,000 shares. At the same time, the stock exchanges prohibited so-called customer-directed give-ups, a practice that was producing abuses which it was feared might result in challenges to the very existence of minimum commission rates. Also introduced at that time, at the instance of the New York Stock Exchange, were competitively determined rates on very large orders: members were permitted to negotiate with institutional customers in respect of the portion of the commission itself which exceeded $100,000 on a given order. More recently, on April 5, 1971, negotiated rates were introduced into the commission rate structure on the portion of orders exceeding $500,000.

Barriers to full participation in the central market must be eliminated. It should be understood that while the Commission is concerned that the level of commissions be reasonable in all transactions—and particularly in institutional transactions where the difficulties with fixed commissions are most acute—obtaining the best brokerage services, not merely the amount of the commission, must be the ultimate criterion. Our concern with the fixed minimum commission, therefore, is not only with the level of the rate structure but with its side effects as well. Of these, perhaps the most important are the following:

(a) Dispersion of trading in listed securities.
(b) Reciprocal practices of various kinds.
(c) Increasing pressure for exchange membership by institutions.

Fixed minimum commissions, at least on institutional size orders, may well make it very difficult, if not impossible, to create the central market system we envision. This is true because certain markets and market makers are very likely to choose to stay outside the system in order to compete in service charges as well as in execution, as the third market does, or in order to compete, as certain regional exchanges do, for institutional business by directly or indirectly providing institutions with rebates of commissions.

The fixed minimum commission, as pointed out below, either creates or exacerbates the problem of institutional membership. If competitive commission rates were introduced on most institutional size orders, it appears that most institutions would no longer be interested in membership, except to the extent that some would wish to engage in the general public brokerage business, which would contribute needed capital strength to the industry. We must bear in mind, however, that we are dealing with an industry which has operated under fixed commission rates for a very long time. It is necessary to measure the effect of competitively determined commissions very carefully on a step by step basis. Also, as noted above, the major thrust of broker-dealer reform should be toward upgrading standards of service to the public, including the provision of adequate information, advice, care and responsibility.

Any changes in the commission structure should not reverse this process.

The principal argument in favor of fixed minimum commissions is the severe decline in the revenue of the securities industry predicted to result if competitive rates were suddenly introduced on all institutional business. In view of the industry's recent financial crisis and the substantial scars that remain, the possibility of this occurrence is a powerful argument against any precipitous movement to competitive commissions. This would not, however, rule out moving towards competitive rates, at least on large orders, at a measured, deliberate pace. Given time and a sense of direction, the industry should be able to adjust to this change.

The Commission has cooperated with the NYSE in developing a program to monitor orders which are subject to competitively determined rates. Data received to date indicate that there have been substantial reductions in commissions on the portions of orders exceeding the $500,000 breakpoint. They also suggest that in determining the commission on the "overage" the parties take into account the overall size of the order and the amount of commission attributable to the fixed rate portion of the order.

The Commission is in the process of conducting an inquiry into the impact of competitively determined rates on the markets and market participants. While we have made no final judgment as to the breakpoint at which competitive rates should commence, we believe that at least on large institutional orders the problems engendered by fixed minimum rates can best be resolved by a process of phasing in competitively determined rates. The Commission is aware that further reductions in the breakpoint might have a more severe impact on the income of certain kinds of member firms, on the services they provide, on their role in the capital markets, including the distribution of securities, and on the desires of institutions and their managers to recapture commissions or otherwise use them for their benefit. Indeed, as will be discussed later, the Commission believes that clarification may be necessary in the concept of what services may be paid for by customers by means of commission dollars, both competitively determined and fixed.

Nevertheless, we have determined that a reduction in the breakpoint to $300,000 should take effect in April, 1972, after a year's experience with competitive rates on that portion of an order exceeding $500,000. As noted above, we have also determined to move toward the point at which commission rates on all orders of institutional size will be, at least in part, subject to competitive rates. The Commission will, of course, continue to observe the experience under the $300,000 level in considering the timing of subsequent steps.

In connection with the subject of commission rates it may be noted that any rate structure is ultimately based upon the cost characteristics of the service being paid for. As stated above, it is to be hoped, and we are optimistic, that current efforts to streamline the clearance function, especially through reduction of the movement of paper in the stock transfer process, will result in significantly lower costs. Similarly, future technological applica-

tions may make it possible to automate the execution function as well; the NYSE's experiment with automated round lot execution is an encouraging step in this direction.

Research and Suitability

There can be little doubt that the general availability of information concerning virtually every aspect of the operations and prospects of corporate issuers has been one of the most important elements which has distinguished the American capital markets from all others and which has contributed to their phenomenal growth. Further it is the process broadly referred to as "investment research" which has contributed significantly to unearthing much of this corporate information and sifting, digesting and transmitting it in meaningful form so that it may serve as the basis for market decisions by investors.

It is, therefore, the Commission's premise that broad-based securities research and its prompt and fair dissemination to large and small investors is indispensable to an efficient system of securities markets. We believe that a broker is obliged to communicate any material changes in his prior investment advice arising from subsequent research he may do to all customers whom he knows have purchased and may be holding shares on the basis of his earlier advice, at least under circumstances where to do so would not impose an unreasonable hardship on the broker.

It is also essential that, regardless of what level of competitively determined commission rates may be determined to be appropriate, the viability of the process by which research is produced and disseminated not be impaired. Presently, many institutions compensate brokers for research by allocation of commission business. If fixed minimum commissions were no longer to be applicable to institutional size transactions, an "unbundling" process might result so that some brokers would charge separate fees for services such as execution, research and the like. Nevertheless, brokers who do in-depth research might prefer to charge higher commissions than other brokers whose research activity is narrower in scope or of lesser quality or value. Concern has been voiced that under such circumstances institutional managers charged with a fiduciary duty would be reluctant to pay a higher commission rate which reflected research. The Commission believes that they should not be. In our opinion, the providing of investment research is a fundamental element of the brokerage function for which the bona fide expenditure of the beneficiary's funds is completely appropriate, whether in the form of higher commissions or outright cash payments. It should be disclosed to investors that their money manager is willing to exercise discretion in seeking the best information and research available and does not consider that there is an obligation to get the cheapest execution regardless of qualitative consideration. It should of course be expected that managers paying brokers for research with their beneficiaries' commissions or other funds would stand ready to demonstrate that such expenditures were bona fide.

Concern has also been expressed that under an unbundled rate system many small investors would seek to obtain the lowest rates available and would lose the benefit of basic research now paid for by the minimum commission. In this regard, the Commission wishes to emphasize that a broker-dealer will not be relieved of his obligation to his customer with respect to the "suitability" of a securities transaction.

It should be noted that the suitabiilty rules are cast in terms of the needs of the customer based on information he furnishes to the broker. Unarticulated but implicit in such rules is also the broker's obligation to obtain current basic information regarding the security and then to make an evaluation as to the suitability of a recommendation for a particular customer in view of both the information concerning the security and the customer's needs.

The Commission recognizes that some customers will independently determine to purchase or sell specific securities and will not request or desire the advice of a broker and that in these circumstances it is impractical to require rigid adherence to the suitability rules. Even in such cases, however, the broker would appear to be obliged to reveal to the customer information known to him about the security which might reasonably be expected to affect the customers' decision, apart from his other duties under applicable provisions of the securities laws.

Vigorous enforcement of the standards of suitability discussed above would thus mean that as competitive commission rates are introduced the basic execution charge which would evolve would include the provision of research services to the extent necessary to comply with these standards.

Reciprocal Portfolio Brokerage for Sales of Investment Company Shares

The Commission and other persons interested in the securities industry have a number of years been seriously concerned about the widespread practice of investment company managers using portfolio brokerage of mutual funds to reward broker-dealers for sales of fund shares. This practice was examined by the Commission in its Special Study of Securities Markets (1963), its Report on the Public Policy Impilcations of Investment Company Growth (1966) and the Institutional Investor Study. Several committees of the NASD have also addressed themselves to this practice.

The regulatory problems related to the reciprocal use of portfolio brokerage, as noted in these studies, are at least fivefold. First, the practice contains the danger that the retail seller of a mutual fund will be unduly influenced to base his recommendation to his customer on the amount of additional rewards he receives in terms of portfolio brokerage commissions rather than upon the investment needs of his customers. In fact, industry leaders have found that this danger is very real in the case of other rewards that are given, over and above the ordinary fund dealer concession. They have found this to be true even where this additional source of dealer compensation is disclosed to the customer. These abuses have led the NASD to

limit or prohibit certain kinds of supplementary rewards in its Special Deals Interpretation.

Second, fund managers may be tempted to engage in various types of improper portfolio practices at the expense of fund shareholders. The competitive need to allocate portfolio brokerage commissions to fund sellers may exert pressures for frequent sales and puchases of fund portfolio securities unwarranted by sound investment considerations. Such pressures on fund managements may also result in the selection of firms to handle portfolio executions that are not necessarily in a position to obtain the best prices.

Third, the Commission's studies have reiterated the point that this form of reciprocity has serious anticompetitive impacts. The use of portfolio brokerage to reward dealers who sell investment company shares places small investment companies and complexes, which cannot allocate as much brokerage for sales as larger ones, at a distinct competitive disadvantage because the NASD's Special Deals Interpretation is not applied to reciprocal brokerage but is applied to prohibit managements from rewarding fund sellers in other ways.

Fourth, we believe that the cost of selling and purchasing mutual fund shares should be borne by the investors who purchase them and thus presumably receive the benefits of the investment, and not, even in part, by the existing shareholders of the fund who often derive little or no benefit from the sale of new shares. To impose a portion of the selling cost upon the existing shareholders of the fund may violate principles of fairness which are at least implict in the Investment Company Act.

Finally, the practice of compensating broker-dealers for mutual fund sales by assigning them commission business violates the long accepted precept in investment company regulation that an investor is entitled to know how much was paid to those who sell him an investment. This practice puts the investment company in the position of issuing a prospectus which purports to specify the sales compensation but fails to quantify the additional compensation paid to the customer's broker-dealer in the form of commission business awarded on the basis of success in selling investment company shares.

The Commission believes it should be made clear now that these reciprocal practices must be terminated. When the NASD completes its study of what it considers to be a fair load for the sale of investment company shares, as required by the Investment Company Amendments Act of 1970, it will be in a position to recommend a sales charge which reflects the full incentive appropriate to such sales and which can be fully and explicitly disclosed to the buyers of such shares. To accomplish this the Commission is sending a letter to the NASD setting forth the Commission's views and requesting the NASD to direct its members to discontinue the use of reciprocal portfolio brokerage for the sale of investment company shares. If such a response is not worthcoming, the Commission will then consider rule-making to accomplish the desired result.

Institutional Membership

The question of institutional membership on national securities exchanges is an exceedingly difficult one, and in dealing with it we have painstakingly reviewed the alternatives presented to us. It is the Commission's firm view that, as a central market system develops, it should have at its heart a corps of professional brokers and market makers serving investors. Moreover, in light of the strain which the magnitude and tempo of the transactions of financial institutions currently place on the securities markets, it is our view that institutions should not be permitted to deal through brokerage firms established principally to handle their own transactions but should be required to deal through brokers dedicated primarily to serving and having fiduciary obligations to a broad investing public. Thus, as a general rule, the Commission believes that membership in the central market system should be open only to those who meet qualifying standards and who have the primary purpose of serving the public as brokers or market-makers.

We should begin with definitions. The term "institutional membership" has not been clearly defined, with the result that discussion of this issue, both in terms of public policy and in terms of where responsibility for deciding the fundamental question is lodged, has been enveloped in a definitional fog. For this purpose, we define institutions to include banks, pension and other employee benefit funds, investment companies (including their advisers) and insurance companies.

There are several varieties of institutional membership. There is, first, the situation which exists on several regional exchanges in which an institution creates a subsidiary which does no brokerage business with the public, but rather exists primarily as a vehicle to obtain rebates of commissions for its parents. Such a subsidiary does not actively participate in stock exchange transactions for its parent. Rather it refers its parent's order to, or is approached by, a member of the New York Stock Exchange which is also a member of the particular regional exchange (a so-called "dual member"). The dual member executes the transaction in the primary market and then, using long established access techniques for sole members of regional exchanges, reciprocates to the subsidiary of the institution commissions on unrelated transactions. The subsidiary, in turn, rebates all or part of these sums to its parent or its affiliates.

A second situation included within the concept of institutional membership is that where an institution establishes or acquires a broker-dealer which does business for the general public and may also execute some transatcions for its parent.

There is also the situation where an existing member firm of an exchange does predominantly a public brokerage business but asio, directly or through affiliates and subsidiaries, managers investment companies, pension and employee benefit funds and other institutional portfolios, and in connection therewith may perform brokerage functions for these managed funds and accounts.

Certain regulatory problems arise out of the relationships created by institutional membership. The first stems from the existence of a structure of fixed minimum commissions. So long as such a structure exists, large investors should not, by virtue of their economic power and size, be entitled to obtain rebates of commissions not available to other investors. While fixed minimum commissions exist, they should apply to all investors, and an exception should not be given to a particular person. Institutional membership, however, provides a vehicle for obtaining rebates, either directly or indirectly.

Second, institutional membership may result, to a greater or lesser degree depending on the circumstances, in the use of exchange membership for private purposes rather than for the purpose of serving the public in an agency capacity or otherwise performing a useful market function. In part, this problem is similar to that discussed in the preceding paragraph: the problem of using exchange membership as a means of obtaining a reduced commission rate. But the problem of using exchange facilities for private purposes is broader in scope than the rate question. For we believe that membership in the market system should be confined to firms whose primary purpose is to serve the public as brokers or market makers. Stock exchanges are affected with an overriding national interest which demands that they act to maintain and improve the public's confidence that the exchange markets are operated fairly and openly. The public should have the assurance that a member of an exchange is dedicated to serving the public, and membership by institutions not predominantly serving non-affiliated customers should not be permitted to cloud this objective.

Our authority to deal with these problems derives from the stated purposes of the Securities Exchange Act and is most specifically expressed in Section 19(b) of such Act which deals with "such matters as . . . the fixing of reasonable rates of commission, interest, listing, and other charges . . . and . . . similar matters".

Insofar as institutional membership is employed primarily as a vehicle for obtaining recapture of commissions, as in the first situation described above, it should not be allowed to exist. Membership under those circumstances is plainly in conflict with the concept of fixed minimum commissions and results in exchange membership solely for private purposes. We believe that such membership and practices which permit the rebate or recapture of commissions, directly or indirectly, should be eliminated. The Commission intends to act promptly to terminate this type of membership. The regional exchanges, as vital elements of the central market system, should compete on their merits as market components and should not need this special competitive tool.

With respect to the second situation—where an institution establishes or acquires a broker-dealer doing business for the general public—we perceive no reason either of law or policy why this should not be permitted. The establishment of such a subsidiary doing a brokerage business for the public provides a useful source of permanent capital for the securities industry.

This necessarily implies eleminiation of the so-called "parent test". The question then is whether, assuming that such a subsidiary does business predominantly with public investors, it should also be allowed to execute some transactions for its parent institution as an incident to that public business.

Before discussing this aspect of the second described situation it is useful to examine the third situation—that of an existing member firm doing predominantly a public brokerage business and also engaging in money management and performing brokerage for the accounts which it manages. Such relationships have long been the practice in the securities industry, although they too can result in avoidance of the fixed commission structure for certain investors. Moreover, if it were to be concluded that it is impoper for a member firm to execute transactions for accounts which it manages, it would logically follow that it could not execute transactions for its own account (except in the performance of market functions, such as those of a specialist, block trader or arbitrageur). But it has also long been the practice in the securities industry for member firms to execute transactions for their own account. In view of the long-standing nature of these relationships and practices, we believe that a prohibition against a member firm of an exchange executing transactions, either for accounts which it manages or for its own account, would be a precipitate measure, the full consequence of which might not be foreseeable at this time. We also believe that those members of the investing public who invest directly rather than through institutions are in need of additional money management services an that the experience member firms have accumulated in the area of money management can be valuable in meeting this need. Finally, we think it important that a portion of broker-dealer income be based on a more stable source than commission business.

Returning to the second type of institutional membership, we believe that so long as member firms are permitted to transact a portion of their commission business for their own and managed accounts, it would be inappropriate to impose an absolute restriction prohibiting an affiliate of an institution from conducting any commission business on behalf of its institutional affiliate.

We should elaborate on why the Commission is unable at this time to reach the conclusion that firms affiliated with institutions should be flatly prohibited from executing transactions for those institutions. We are constrained by considerations of economic impact and of fairness as between brokerage firms created by institutions and brokerage firms which themselves have created institutions. In addition, we are mindful of the fact that Congress has had occasion to review the investment company—broker relationship and has not abolished it.

Congress in 1934 mandated a review by the Commission of whether the functions of broker and dealer should be separated, and at that time the Commission found that, on balance, it should not. Furthermore, in enacting the Investment Company Act Congress apparently did not find it necessary that the brokerage and investment company functions be completely sep-

arated. There are potential conflicts of interest in these relationships, as well as in the broker-underwiter relationship, the money manage-underwriter relationship and the dealer-money manager relationship. If all of these functions were to be separated, the capital-raising capability of the industry and its ability to serve the public could be significanty weakened. We therefore believe that the conflict of interest problem which is inherent in the combination of money management and brokerage is a matter to be resolved by Congress. Only that body should decide whether or not this potential conflict can continue to be dealt with in the same manner as the other conflicts mentioned above, by a combination of disclosure and enforcement of fiduciary obligations, or whether it is sufficiently troublesome to require separation of the two functions.

In view of these principles, we believe that all exchange members should be required to engage in a bona fide public brokerage business, except insofar as they perform a recognized market function such as that of a specialist. Precise definition of what constitutes a bona fide public brokerage business is a matter on which we will seek the advice of the self-regulatory bodies and other interested persons. We believe that concept and its definition also warrant the attention of Congress. However, it is our view that any brokerage firm which is not doing a predominant portion of its brokerage commission business for non-affiliated persons should not be considered to be conducting a public brokerage business. Predominant means to us significantly more than half. Non-affiliated person's include individual discretionary and non-discretionary accounts and the accounts of non-affiliated institutions, but do not include institutional parents or investment companies or other institutional funds which are managed under contracts or arrangements which give the brokerage firm investment discretion. The Commission will formally request the stock exchanges to adopt uniform rules restricting membeship to firms which do such a public brokerage business. If any stock exchange does not adopt such rules, we will then determine whether we should require this action or whether we should request appropriate legislation from Congress.

This qualification on institutional membership of any kind should ensure that exchange membership is utilized by broker-dealers engaged in a public brokerage business and that the opportunity to secure commission rebates is circumscribed to the greatest extent possible, consistent with minimum disruption in existing methods of doing business.

Under the system we have described, broker-dealers will remain able to diversify their business so that more stable money management income will increasingly balance off fluctuating brokerage income, and their brokerage customers will not be deprived of their money management experience. On the other hand, institutions will have an opportunity to diversify by entering the public brokerage business, thus providing needed new capital in that sector.

It is also appropriate to note concern has been expressed that direct or indirect reciprocal arrangements may be devised and utilized to avoid the

thrust of any attempt to control or regulate institutional membership. We wish to caution those considering this course that if this should occur it is our intention to adopt or require the adoption of and to enforce vigorously appropriate rules prohibiting such arrangements.

In view of the increasing internationalization of securities transactions, it is relevant to a discussion of exchange membership to consider whether brokers conducting a public business but controlled or owned by foreign entities should be permitted to become members of our exchanges. We believe that this question should be resolved in the context of reciprocal access to foreign securities exchanges, with the goal of open access under equivalent competitive conditions for all qualified brokers of all nations.

IMPLEMENTATION

To further develop and carry out the policies outlined in this statement, the following steps, among others, appear necessary:

1. The Commission will designate a working committee to continue the work of the committee constituted by the exchanges to study the development of the comprehensive market disclosure system. It is contemplated that this committee would be made up of the members of the existing committee, plus certain additional members, including Commission personnel, and that it would present to the Commission within 90 days of its formation specific recommendations on the information to be disclosed by the system and the technological means for accomplishing this disclosure, together with an analysis of the relevant economic considerations. Meanwhile, the Commission will take action to require that all exchanges and third market firms report volume and range of prices in all their transactions in listed securities on a daily basis.

2. A working committee will be appointed to study and report on the structure, regulation and governance of a central market system, including rules to regulate the activities of competing market makers and to effectively integrate the over-the-counter market in listed securities with the exchange markets.

3. A working committee will be appointed to study and propose necessary and desirable rules to ease the impact and improve the handling of large blocks.

4. Within the next 90 days the Commission will act to reduce the level at which commission rates are competitively determined down to $300,000.

5. The Commission is writing to the NASD to direct the formulation and implementation of rules terminating the practice of placing an investment company's portfolio executions with broker-dealers in consideration of their sales of that investment company's shares.

6. The Commission will promptly request all exchanges to adopt rules excluding from membership any organization whose primary func-

tion is to route orders for the purpose of rebating or recapturing commissions, directly or indirectly, in any manner or form.

7. The Commission will promptly consult with all exchanges and other interested persons in order to formulate exchange rules requiring that members engage in a brokerage business, as measured by doing a predominant part of their brokerage commission business with non-affiliated customers. These consultations will lead to a future determination as to whether implementation of this step requires Congressional action.

CONCLUSION

This Statement of Policy reflects the Commission's present evaluation of the structure and operation of the securities markets and of the industry which serves those markets. In formulating proposals to deal with the deficiencies that have been observed, the Commission recognizes that the fundamental objectives encompassed by its statutory mandate—including the protection of investors, fair dealing in securities, fair administration of the self-regulatory organizations, the prevention of fraudulent and manipulative acts and practices and the promotion of just and equitable principles of trade—may require the consideration of a broad range of regulatory alternatives for their fulfillment. As the securities markets continue to change, so must the Commission continually direct its attention to regulatory alternatives responsive to such changes.

In setting out our view of the directions in which the industry must move, we believe we have outlined the structure of a marketplace which will serve the nation well in the future. Yet we recognize that the task ahead is enormous and requires that others join us in our efforts and build upon the foundation we have sought to lay. Despite the labors which achievement of our goals will require, we can take comfort in the knowledge that if we are successful, as we believe we will be, the benefits which derive from our joint undertaking will be shared by many: the investing public, the securities industry, the financial services industry, the multitude of business enterprises with their insatiable appetite for capital and the economy as a whole.

* * *

COMMISSIONER OWENS DISSENTING IN PART:

I concur in all respects with the stand of my colleagues in the STATEMENT ON THE FUTURE STRUCTURE OF THE SECURITIES MARKETS except that I cannot agree with their conclusions regarding institutional membership and the related issues of institutional management and brokerage (page 20, et. seq.).

Before coming to the precise point of disagreement, I should like to say that under our American system of free enterprise any legally organized institution [1] should be permitted to invest in a broker-dealer subsidiary or affiliate and that that entity should be allowed entry to the exchanges, provided, of course, that it is adequately capitalized and otherwise qualified I further believe, however, and it is here that I disagree with my colleagues, that such affiliated broker-dealer should be required to do exclusively a public business and should be prohibited from engaging in any securities transactions with its parent or affiliate. The justification or rationale for such denial is that securities transactions in such a relationship permit of a rebate situation, either directly or indirectly. The granting of rebates is, of course, always damaging to the integrity of the securities industry and to the welfare of the general public which it serves; its deleterious effects cannot be cured by prohibiting exchange memberships sought primarily for the purpose of rebating or by requiring that members do a predominant part of their listed commission business with non-affiliated customers. Such restrictions, which are those advocated by my colleagues, do not prohibit rebates. They only limit the portion of the members' business which can be done on behalf of institutional afiliates and, thus, in effect, sanction limited rebates.

The Commission could implement the prohibition I advocate here pursuant to the legal authority presently vested in us by Section 19(b) of the Securities Exchange Act of 1934. That section authorizes the Commission, following certain procedures described therein, to alter or supplement the rules of a national securities exchange with respect to, among other matters, the fixing of reasonable rates of commission. Rebating is, by its very definition, a practice which impinges directly upon the effectiveness of the prescribed minimum commission rates.

Not only do I think it is bad for an institution to do business on an exchange through the medium of a broker-dealer affiliate which it controls,

[1] For the purpose of this discussion, institutions will be defined as banks, pension and other trust funds, insurance companies and investment companies.

but on the other side of the coin, I think that the practice of a broker-dealer performing portfolio brokerage services for institutional accounts which it manages, either directly or indirectly, should likewise be prohibited. I would not include in this category individual discretionary accounts or those belonging to the broker-dealer firm itself or its principals.

The difficulty in regard to implementing this prohibition, however, is that the giving of rebates is not involved, as I see it, and we, consequently, would not have the legal authority to act administratively against this type of operation as we do in the case of the institutionally dominated broker-dealers. I would, therefore, propose that the Commission formally request the stock exchanges to adopt uniform rules prohibiting firms which manage institutional accounts from acting as brokers for those same accounts. If the stock exchanges were not willing to adopt such rules, then I would propose that the Commission petition the Congress to enact legislation to accomplish this objective.

☆ U.S. GOVERNMENT PRINTING OFFICE: 1972 O—457—477

NEW YORK STOCK EXCHANGE
DEPARTMENT OF MEMBER FIRMS
4 NEW YORK PLAZA
AT BROAD AND WATER STREETS
NEW YORK, N.Y. 10004

ROBERT M. BISHOP
VICE PRESIDENT
DIRECTOR
(212) 623-5250

March 17, 1972

Mr. Irving M. Pollack
Division of Trading and Markets
Securities and Exchange Commission
500 North Capitol Street, N. W.
Washington, D. C. 20549

Dear Mr. Pollack:

Pursuant to SEC Rule 17a-8 under the Securities Exchange Act of 1934, we are submitting herewith three copies of proposed amendments to Sections (2) and (4) of Article XV of the Exchange Constitution which was laid on the table and approved in principle by our Board at their meeting on March 16, 1972, and which will be presented to the Board for submission to the membership for vote on March 30. We, therefore, request your accelerated consideration of these amendments and would appreciate receiving your comments as soon as possible.

The proposed amendments would put into effect the changes requested in the Commission's Statement on the Future Structure of Securities Markets of February 2 and Mr. Casey's letter to Mr. Haack of February 9.

Sincerely,

Enc.
cc: Mr. William Painter
Subcommittee on Commerce
and Finance

P[illegible]POSED AMENDMENTS OF SECTI[illegible]S (2). AND (4) OF ARTICLE XV

New language underscored. Delete langugage in brackets [ ].

(1) Amend Section 2(a) of Article XV which relates to the commission to be charged non-members as follows:

(a) On that portion of an order involving an amount of [$500,000] $300,000 or less, on business for non-members and allied members, including joint account transactions in which any such person is interested.

* * *

(2) Amend Section 2(a)(2) of Article XV relating to non-member rates on multiple round lot orders as follows:

(2) On each multiple round lot order for 200 shares or more, commissions shall be based upon the amount involved in the order and shall not be less than the rates hereinafter specified:

Amount Involved in the Order	Minimum Commission
$ 100-but under $ 2,500	1.3% of money involved+$ 12.00
$ 2,500-but under $ 20,000	0.9% of money involved+$ 22.00
$20,000-but under $ 30,000	0.6% of money involved+$ 82.00
$30,000-to and including [$500,000] $300,000	0.4% of money involved+$142.00

Plus a charge for each round lot of 100 shares within the order as follows:

First to tenth round lot	$6.00 per round lot
Eleventh round lot and above	$4.00 per round lot

Notwithstanding the foregoing:

(i) When the amount involved in an order is less than $100, the minimum commission shall be as mutually agreed.

(ii) The minimum commission per round lot shall not exceed the single round lot commission computed in accordance with the provisions of paragraph 2(a)(1).

(3) Amend Section 2(a)(4) of Article XV relating to the commission to be charged non-members with respect to stocks selling below $1.00 per share as follows:

(4) On that portion of an order involving an amount of [$500,000] $300,000 or less, on stocks selling below $1.00 per share, commissions shall be based upon the amount involved in the order and shall not be less than the rates hereinafter specified:

* * *

(4) Amend Section 2(b) of Article XV relating to intra-member rates for floor brokerage and clearance to read as follows:

(b) On that portion of an order involving an amount of [$500,000] $300,000 or less, on business for members of the Exchange when a principal is not given up, commissions shall be based on the number and price of shares in the order as follows:

* * *

(5) Amend Section 2(c) of Article XV relating to intra-member rates for floor brokerage as follows:

(c) On that portion of an order involving an amount of [$500,000] $300,000 or less, on business for members of the Exchange when a principal is given up, commissions shall be based on the number and price of shares in the order as follows:

* * *

(6) Amend Section 2(f) of Article XV to read as follows:

(f) Nothwithstanding the rates prescribed in paragraphs 2(a)(1) and 2(a)(2), when the amount involved in an order exceeds [$500,000] $300,000 the minimum commission to be charged pursuant to those paragraphs shall apply to the maximum number of round lot transactions involving an aggregate amount not in excess of [$500,000] $300,000. The Exchange shall from time to time prescribe the procedures to be followed in computing commissions pursuant to this Article.

(7) Amend Section 4(c) of Article XV which relates to clearing charges on proprietary transactions as follows:

(c) Where the purchase or sale is made at one time from a single seller or buyer and involves an amount in excess of [$500,000] $300,000, the rates specified above shall apply only with respect to that portion of such purchase or sale not in excess of [$500,000] $300,000.

1148 PK
on $300,000
Negot Rates

NEW YORK STOCK EXCHANGE
11 WALL STREET
NEW YORK, N. Y. 10005

March 23, 1972

The Honorable William J. Casey, Chairman
Securities and Exchange Commission
500 North Capitol Street, N.W.
Washington, D.C. 20549

Dear Chairman Casey:

COPY

We have your letter of March 9 asking that each exchange begin to draft rule changes to implement the Commission's decision that the level at which commission rates may be negotiated be reduced to $300,000 effective in April 1972.

On March 17 a proposed change in the Exchange's Constitution reducing the breakpoint to $300,000 was submitted to Mr. Irving Pollack pursuant to Commission Rule 17(a)8.

This action was taken at the Policy meeting of the Exchange's Board of Governors on March 16, at which time the Board also decided, as reported in the enclosed press release of that date, "...that it will continue to closely monitor the impact of negotiated rates at the $300,000 level as was done at the $500,000 level. In six months following the effectiveness of the $300,000 level, the Board plans to again review the level. Depending upon the results of the monitoring data at the time of that review, the Board may recommend a change in the level at which commission rates may be negotiated."

This action was taken in accordance with the timetable which the Board intends to follow which envisions final action by the Board of Governors at its March 30 meeting and submission of the proposal to the membership for balloting to be concluded by April 12. Assuming a favorable vote of the membership, the amendment providing for negotiated rates on that portion of an order in excess of $300,000 would become effective April 24, i.e. for transactions cleared beginning May 1.

We hope that this action and timetable is consistent with the Commission's request, as stated in your letter of March 9.

Your letter of March 9 also asks the exchanges to "make any rule changes necessary to enable it to comply promptly with such (future) requests" for further reductions in the breakpoint. We have reviewed whether any such rule changes are necessary and concluded that they are not.

A year ago, prior to the adoption of the Constitutional amendment providing for negotiated rates at the $500,000 level, the Board of Governors, with Commission acquiescence, repealed Exchange Rule 26 which was adopted around 1958 following the last commission rate changes and required, in effect, a lapse of 30 days before the Exchange made any changes in commission rates.

Under present Constitutional procedures (Article XX), an amendment to the Exchange Constitution must be laid upon the table, i.e. posted, for a minimum period of two weeks prior to approval by the Board for balloting by the membership. Balloting is to be open for a minimum period of ten days. Accordingly, it is possible under existing procedures to amend the Exchange Constitution in 24 days, i.e. 14 days posting and 10 days balloting.

This time frame does not take into account the Commission's Rule 17(a)3 which requires three weeks notice of any proposed changes nor does it reflect the need to make commission rate changes effective at a time which accommodates member firm operations and clearing procedures.

Sincerely,

Encl.

RWH:DLC:ek

(Signed) ROBERT W. HAACK

NEW YORK STOCK EXCHANGE
NEWS BUREAU

11 WALL STREET, NEW YORK, N.Y. 10005 • Code 212 623-2065 TWX No. 710-581-5464
For further information contact JAMES F. HILL Manager NEWS BUREAU Home Phone (West Windsor, N. J.) 609-799-0364

For Immediate Release, Thursday, March 16, 1972

NYSE BOARD ACTION
ON NEGOTIATED FEES

The Board of Governors of the New York Stock Exchange, Inc. has given preliminary approval to a Constitutional amendment which would permit commissions to be negotiated on portions of orders in excess of $300,000, the Big Board announced today.

At the same time, the Board made the following policy statement: "In considering the question of the appropriate level at which commission rates may be negotiated the Board of Governors has determined that it will continue to closely monitor the impact of negotiated rates at the $300,000 level as was done at the $500,000 level. In six months following the effectiveness of the $300,000 level, the Board plans to again review the level. Depending upon the results of the monitoring data at the time of that review, the Board may recommend a change in the level at which commission rates may be negotiated."

Commissions on portions of orders over $500,000 have been negotiated since April 5, 1971, with rates being fixed on orders under $500,000.

Board action on the proposed amendment follows an SEC announcement in February that a reduction in the negotiated commission level to $300,000 should take effect in April, 1972.

Analysis Due

Exchange President Robert W. Haack noted that a detailed analysis of the impact of negotiated rates over the past 11 months is to be completed by March 30.

"Assuming that this analysis does not reveal any unfavorable factors of which we are not now cognizant," Mr. Haack said, "we would ask the Board to approve forwarding the amendment to the Exchange membership for balloting."

A study of negotiated rates for the second and third quarters of 1971 showed that brokerage firm revenues were reduced by an estimated $31.4 million, when compared to what commissions would have been under the previous fixed schedule.

Setting forth a projected timetable, Mr. Haack said that members could vote on the proposed amendment on April 12. If there was a favorable vote for the amendment, negotiated rates on that portion of any order over $300,000 would become effective for trades made on April 24, he added.

OFFICE OF
THE CHAIRMAN

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

MAR 9 1972

Mr. Robert W. Haack
President
New York Stock Exchange
Eleven Wall Street
New York, New York 10005

Dear Mr. Haack:

As you know, the Commission's February 2 Statement on The Future Structure of the Securities Markets concluded that a reduction to $300,000 is indicated in the breakpoint above which commission rates on stock exchange transactions should be competitively determined. We indicated there that the reduction should take effect in April 1972, after a year's experience with competitive rates on the portion of an order exceeding $500,000. Since then we have received no evidence which would lead us to conclude that this reduction in the breakpoint should not take place on schedule. Accordingly, we believe that each exchange should begin to draft rule changes which may be implemented at the forthcoming March policy meeting of its Board. We will certainly advise you should evidence come to our attention between now and April which would require us to change our view on your exchange proceeding to lower that breakpoint to $300,000 by April.

The Commission's February 2, 1972 Statement further stated that "we have also determined to move toward the point at which commission rates on all orders of institutional size will be, at least in part, subject to competitive rates." In view of the possibility of future Commission requests for further reductions in the breakpoint level, your exchange should at this time make any rule changes necessary to enable it to comply promptly with such requests.

Sincerely,

William J. Casey

William J. Casey
Chairman

[illegible]		
[illegible]		
[illegible]		
[illegible]		
[illegible] Fr NRW	AW	12/6/72
[illegible]		
[illegible]	✓	
[illegible]	LAW	
[illegible]	WET 13 MW	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD A. GORDON, etc.

Plaintiff

against

Civil Action
71 Civil 1496 (MEL)

NEW YORK STOCK EXCHANGE, INC. et. al.

Defendants

AFFIRMATION OF I. WALTON BADER IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS OR FOR SUMMARY JUDGMENT

I. WALTON BADER, a member of the Bar of the State of New York, hereby states the following under penalties of perjury.

I am one of the attorneys for the plaintiffs herein and am fully familiar with the facts and circumstances of this action.

This suit, a Class Action, has been brought against the defendant exchanges and representative brokers for damages with respect to the following practices.

a- The Rules of the defendant Stock Exchanges which set minimum commission charges and provide penalties for brokers charging less than the stipulated minimums (although charges in excess of the minimums are permitted).

b- The Rules of the defendant Stock Exchanges which provide for limited access to the facilities of the Exchanges and, in effect, provide for access to such facilities only through "members".

c- The Rules of the defendant Stock Exchanges which limit the number of "members" and which, by reason thereof, make "seats" on the defendant Exchanges costly and beyond the reach of many potential competitors.

d- The Rules of the defendant Stock Exchanges that provide for negotiated commission rates on trades in excess of Three Hundred Thousand ($300,000) Dollars but fixed rates on trades for lower amounts.

e- The Rules of the defendant Stock Exchanges that provide for a discount on trades in excess of 1000 shares and a higher commission for trades less than 1000 shares.

f- The Rules of the defendant Stock Exchange, in effect from April 6,1970 to March 24,1972 relating to the imposition of an "interim service charge" on trades of less than 1000 shares of stock.

By stipulation the plaintiff's motion that this suit be treated as a Class Action has been deferred pending the disposition of the defendants' motion to dismiss and for summary judgment.

The defendants, in this suit, claim that the Commission Rates involved have been approved by the Securities and Exchange Commission. Annexed to this affidavit are briefs of the Securities and Exchange Commission submitted on motions to dismiss the actions brought by the plaintiffs against that agency with respect to the same issues as involved in this suit. As can be seen from these briefs which set forth the position of the Securities and Exchange Commissic the Commission denies that it has approved any rates or that it has the power to do so. The Commission also suggests that the legality of the rate structure involved be determined in this action.

This being a motion for Summary Judgment all that the plaintiff need show is a "triable issue of fact". It is not necessary on this motion, to prove that the questioned practices are in violation of law. Suffice it to say that there has even been action taken against the Bar Association "minmum fee schedules" where the Bar Associations have no power to enforce their fee suggestions. Various Commodity Exchanges (not regulated by the SEC) have removed minimum commission rates from their Rules after anti-trust attack.

In the Case at Bar the fixed commission rates of the defendant Stock Exchanges would, if not for the claimed SEC regulation, be a clear violation of Sectionl of the Sherman Anti-

Trust Act as constituting a "price fixing" conspiracy. Indeed, since the defendant Exchanges provide for penalties for violation of these Rules,.the illegal nature of this action is almost prima facie established. The affidavit of RICHARD A. GORDON clearly shows that it would be possible, if not for the acts of the defendant Exchanges, to obtain a lower rate of commission from brokers.

Granting price concessions on large trades and price surcharges on small trades are violations of the Robinson-Patman Act (at least prima facie). The affidavit of RICHARD A. GORDON shows that small trades are not, as claimed by the defendant exchanges, more expensive than large trades but, as a matter of fact, the reverse is true.

Providing for limited memberships in a body and excluding outsiders where the body is the only means for carrying out certain activities is likewise a clear violation of anti-trust rules.

Forbidding outsiders to use facilities which constitute the only method of doing business is likewise a violation of anti-trust rules.

The sole defense urged by the defendant Exchanges (despite the voluminous papers submitted) lies in the claim that these Exchanges are "regulated" by the Securities and Exchange Commission and the this Commission has "approved" the rates and practices involved. This is just not true and the briefs of the Securities and Exchange Commission annexed to this affidavit prove it. The defendant Exchanges have, for a long time, been "lobbying" Congress to make the Stock Exchanges fully regulated organizations similar to the regulation imposed on the airlines by the Civil Aeronautics Board, on the Railroads by the Interstate Commerce Commission, etc.

Congress has not, up to this time, given the Securities and Exchang Commission such regulatory power. It is true that, in certain cases the Securities and Exchange Commission can determine rates and practices to be put into effect by the defendant Exchanges,However this requires Notice, hearings, Court Review, etc. which has not been had in this case.

The plaintiffs, in this case, have been adversely affected by the practices complained of herein as set forth in detail in the GORDON affidavit and therefore have standing to question the practices involved. Also, as indicated in the GORDON affidavit, the Securities and Exchange Commission has, itself, indicated that it has not approved the practices involved and sucessfully dismissed Judicial Review of the actions involved on that ground.

WHEREFORE the undersigned prays that the defendants' motion be in all respects denied.

Sworn to before me

This 16th day of February 1973

I. Walton Bader

AFFIDAVIT OF RICHARD A. GORDON IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----------------------------------x

RICHARD A. GORDON, etc.,
Plaintiff,

-against-

NEW YORK STOCK EXCHANGE, INC., ET AL.,
Defendants.

-----------------------------------x

71 CIVIL 1496 (MEL)

AFFIDAVIT OF RICHARD A. GORDON IN OPPOSITION TO MOTION TO DISMISS AND FOR SUMMARY JUDGMENT

STATE OF: NEW YORK)
) ss.:
COUNTY OF: NEW YORK)

RICHARD A. GORDON, being duly sworn, deposes and says:

I am the President of the INDEPENDENT INVESTOR PROTECTIVE LEAGUE, an Unincorporated Association, which maintains an office and place of business at 19 West 24th Street, New York, N. Y.

My brother, FRANK GORDON, is also a Member of the INDEPENDENT INVESTOR PROTECTIVE LEAGUE.

The INDEPENDENT INVESTOR PROTECTIVE LEAGUE is an Organization of investors, in securities listed on the New York Stock Exchange and the American Stock Exchange. Members of the INDEPENDENT INVESTOR PROTECTIVE LEAGUE, including my brother and myself, have utilized the services of one, or more, of the brokerage firms who are Members of the New York Stock Exchange

and the American Stock Exchange.

Mr. Frank Gordon and myself, as tenants in common, have conducted the following trades in listed securities (as annexed hereto):

YEAR
1968
1968
1968
1969
1969
1969
1969
1969
1969
1969
1969
1969
1969
1969
1969
1969
1969
1969
1969
1969
1969
1969
1969
1969
1969
1969
1969
1970
1969

YEAR	BOUGHT OR SOLD	NUMBER OF SHARES	NAME OF SECURITY	COMMISSION PAID	DATE OF TRANSACTION
1968	B	200	REEVES INDUSTRIES	26.26	June 6, 1968
1968	B	200	GRUEN INDUSTRIES	32.76	July 15, 1968
1968	B	200	GRUEN INDUSTRIES	38.00	Sept. 27, 1968
1969	B	200	INDUSTRIAL ELEC. HARD.	26.76	March 10, 1969
1969	B	100	STANDARD PRUDENTIAL CORP.	27.50	Aug. 8, 1969
1969	B	100	UNION OIL COMPANY	45.83	Aug. 8, 1969
1969	B	100	HOLDAILLE INDUS.	37.50	Aug. 8, 1969
1969	B	100	INSILCO CORP.	31.50	Aug. 11, 1969
1969	B	100	TWENTIETH CENTURY FOX FILM	26.25	Aug. 8, 1969
1969	B	100	INSILCO CORP.	31.50	Aug. 8, 1969
1969	B	100	ENGELHARD MINERALS & CHEM.	51.65	Aug. 21, 1969
1969	B	100	SUNSTRAND CORP.	44.20	Aug. 21, 1969
1969	B	200	DRESSER INDUSTRIES INC.	75.26	Aug. 21, 1969
1969	B	100	BENEFICIAL FINANCE CO.	46.35	Aug. 22, 1969
1969	B	100	MEAD CORP.	46.63	Aug. 25, 1969
1969	B	100	CROWN CORK & SEAL	23.75	Dec. 29, 1969
1969	B	100	CROWN CORK & SEAL	23.63	Dec. 8, 1969
1969	B	100	UNION OIL CO. OF CALIF.	44.15	Dec. 2, 1969
1969	S	100	BENEFICIAL FIN. CO.	46.98	Nov. 17, 1969
1969	S	200	CITY INVESTING CO.	88.00	Nov. 17, 1969
1969	S	200	BUNKER RAMO CORP.	81.62	Nov. 11, 1969
1969	B	200	ELGIN NATIONAL INDUSTRIES	29.76	Dec. 19, 1969
1969	B	100	FILTROL CORP.	35.50	Oct. 20, 1969
1969	S	100	STANDARD PRUDENTIAL	29.50	Oct. 20, 1969
1969	B	100	NATIONAL GENERAL CORP.	28.63	Oct. 29, 1969
1969	B	100	WHITE CONSOLIDATED IND.	26.13	Sept. 29, 1969
1969	S	300	TWENTIETH CENTURY FOX	78.00	Nov. 21, 1969
1970	B	100	OCCIDENTAL PETROLEUM	31.63	Jan. 15, 1970
1969	S	100	UNION OIL CO. OF CALIF.	43.88	Dec. 31, 1969

YEAR	BOUGHT OR SOLD	NUMBER OF SHARES	NAME OF SECURITY	COMMISSION PAID	DATE OF TRANSACTION
1970	S	100	FILTROL CORP.	37.75	Feb. 10, 1970
1970	S	100	SUNSTRAND CORP.	38.75	May 25, 1970
1970	S	200	DRESSER INDUSTRIES	68.50	May 28, 1970
1970	S	100	MEAD CORP.	38.56	May 25, 1970
1971	S	100	PEEL ELDER LTD.	24.75	April 20, 1971
1971	S	100	NATIONAL GENERAL CORP.	27.75	Jan. 20, 1971
1971	S	100	UNION OIL CO. OF CALIF.	43.56	Jan. 20, 1971
1971	S	100	CROWN CORK & SEAL	25.00	Jan. 20, 1971

332

RAF TRADING, INC., a New York Corporation, also a Member of the INDEPENDENT INVESTOR PROTECTIVE LEAGUE, CONDUCTED THE FOLLOWING TRADES OF SECURITIES:

YEAR	BOUGHT OR SOLD	NUMBER OF SHARES	NAME OF SECURITY	COMMISSION PAID	DATE OF TRANSACTION
1969	S	600	BATA RESOURCES LTD.	100.44	Feb. 27, 1969
1969	S	400	BATA RESOURCES LTD.	71.92	Feb. 27, 1969
1969	B	300	SCIENTIFIC RES. CORP.	91.50	Oct. 28, 1969
1969	S	100	SCIENTIFIC RES. CORP.	23.25	March 28, 1969
1969	S	200	SCIENTIFIC RES. CORP.	46.50	March 28, 1969
1969	B	200	ALPHA PORTLAND CEMENT	63.76	March 1, 1969

333

The commissions charged the parties to this action have been on a "fixed rate" basis. It has not been possible for any Members of the INDEPENDENT INVESTOR PROTECTIVE LEAGUE or myself to obtain any discount from the published rates of commission for trades on the New York Stock Exchange or American Stock Exchange. At least one broker has told me that he would be pleased to give me a discount from the fixed rates of commission but is not permitted to do so by the Rules of the respective stock exchanges and, if he did, he would be suspended from trading on the said stock exchanges.

It is true that the INDEPENDENT INVESTOR PROTECTIVE LEAGUE and I have not applied for Membership on the New York Stock Exchange or American Stock Exchange. Application for such Membership would have been futile since Membership on the Exchange is restricted to those persons presently holding "seats" thereupon.

On April 6, 1970 the defendant Stock Exchanges placed an "interim service charge" in effect which made "small trades" of less than 1000 shares of stock more expensive than trades in excess of 1000 shares. As set forth in the trading table in this affidavit I, and other members of the Independent Investor Protective League have been charged the aforesaid "interim service charge".

On March 24th, 1972 the "volume discount" for trades in excess of 1000 shares was repealed and the "interim service charge" for "small trades" was reprealed (none of which was given to either myself or members of the Independent Investor Protective League). This was replaced with a "negotiated commission schedule" on orders in excess of $300,000 together with a discount for volume transaction and a "surcharge" for small trades. I, and members of the Independent Investor Protective League, since March 24th, 1972 , have not been

given the benefit of "negotiated rates" (since our trades were too small to qualify for the negotiated rate minimum, and, because our trades were less than 100 shares, a higher rate of commission was charged to us.

Since March 24th, 1972 I, as a tenant in common with my brother, Mr. Frank Gordon, have conducted the following trades:

a-Sold loo shares of Pell Elder Common Stock.
b-Sold 200 shares of General Aniline and Film Corp. preferred.
c- Sold 200 shares of Alpha Portland Cement Common Stock.
d- Sold 200 shares of Houdielle Industries Preferred Stock.

Since March 24th, 1972 BETTY SANDS, a member of the Independent Investor Protective League had the following stock transactions.

STOCK	NUMBER OF SHARES	COMMISSION PAID	BOUGHT OR SOLD	DATE OF TRANSACTION
BORG-WARNER COMMON	200	$96.78	Sold	April 28, 1972
SOUTHDOWN	300	$96.70	Bought	March 29, 1972
SOUTHDOWN	300	$99.06	Sold	May 25, 1972
BARRY-WRIGHT	300	$74.76	Bought	July 31, 1972
FEDERAL CO.	200	$77.20	Sold	Sept 13, 1972
REXHAM	200	$38.80	Sold	Sept 13, 1972

During the hearings held by the Securities and Exchange Commission(which resulted in the "Order" of September 24, 1971 wherein the Securities and Exchange Commission did not object to certain commission practices of the defendant Stock Exchanges) the undersigned appeared before the Commission to express his opposition to the aforesaid rates. After the order was issued the matter was appealled to the United States Court of Appeals for the Second Circuit (Docket 71-1924.)

The Securites and Exchange Commission successfully dismissed this appeal on the ground that no "order" had been, in fact, issued and that the Commission had merely set forth its informal

views. Thereupon the undersigned brought proceedings in the United States District Court for the District of Columbia. The Securities and Exchange Commission again successfully dismissed this suit (Docket 1984-71). The Commissions position, as set forth in the briefs submitted to both Courts, is significant in this case.

In the Court of Appeals proceeding the Commission stated that :

> * * * The Commission's letter of comment to the Exchange did not order the Exchange, petitioners, or any other person to do or to refrain from doing anything. Nor did the letter "approve" or "disapprove" the Exchange's proposals.* **

In the District Court proceeding the Commission stated that :

> * * *However, the question of the type and extent of immunity that may flow from Commission determinations regarding exchange rules and practices need not be decided in this case. <u>The appropriate forum for resolution of that question is in an antitrust action against a self-regulatory organization challenging its rules or the administration of such rules.</u> Indeed, plaintiffs recognize that they may seek to challenge exchange rules directly; they have instituted suit against the New York Stock Exchange for this very purpose.* * *

The fact is that I, and the members of my organization, are being seriously damaged by the practices complained of in this suit. The defendant stock exchanges, and the brokerage firm members, have engaged in a combination and conspiracy to fix commission rates, to limit membership in the exchanges, to grant large investors discriminatory prices over small investors, and to carry out many practices in violation of the anti-trust laws of the United States.

I submit to the Court that, as a matter of fact, it is more expensive to carry out a trade of more than 1000 shares of stock or one in excess of $300,000, than a small trade of 100 shares.

This is so because a large trade has a market direct effect while a small trade has very little effect, in and of itself, on the market. Therefore, in the case of a small trade, it is merely necessary to make a bid or accept one. In the case of a large trade, however, the sale must either be negotiated at a great deal of time and expense, or the stock must be "fed out" in a succession of small trades, to avoid disrupting the market.

I therefore submit that, in this case, there are triable issues of fact that require a trial and, as a matter of law, the Complaint states a cause of action.

In the event that the Court requires further allegations to be made in the pleadings, of which the undersigned is presently not aware, the undersigned respectfully requests leave to amend the complaint in an appropriate manner.

WHEREFORE the undersigned prays that the defendants' motions be in all respects denied.

/s/ Richard A. Gordon
Richard A. Gordon

Sworn to before me
this 2 day of February 1973

s/ E. W. Bader

E. WALTON BADER
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-5140850
Qualified in Kings County
Commission Expires March 30, 1974

LETTER OF PLAINTIFFS' ATTORNEY TO HON. MORRIS E. LASKER

OFFICE COPY

9/63 (2)

LExington 2-6860
6861

CABLE ADDRESS "PATENTS" NEW YORK

LAW OFFICES
BADER AND BADER
274 MADISON AVENUE
NEW YORK, N.Y. 10016

DR. MAXIMILIAN BADER
DR. I. WALTON BADER
MILTON BADER

WASHINGTON REPRESENTATIVE
ALBERT M. ZALKIND

April 27th, 1973

Re: Gordon vs. New York Stock Exchange
Civil Action 71 Civil 1496 MEL

Hon. Morris E. Lasker
United States District Judge
United States District Court
Southern District of New York
Federal Building
Foley Square
New York, N.Y.

Dear Judge Lasker,

In connection with the above matter I enclose a new article which appeared in the Wall Street Journal this morning.

As you note from this article the United States Department of Justice is taking the same position as the plaintiffs in this suit with respect to the question of fixed commission rates.

According to the article in question the Department of Justice has intervened in Thill Securities (cited by the plaintiff in its memorandum) and will submit a brief seeking the elimination of fixed commission rates.

It also seems to be plain that the present suit more directly impinges on the issue of fixed commission rates than the Thill suit and, in view of the letter written to the Attorney General, it may be that the attorney general may move to intervene in the present suit.

It is further interesting to note that Thill is pending in the Seventh Circuit which is the same circuit that decided Kaplan vs. Lehamn Brothers which is the sole authority relied upon by the defendants in support of their motion for summary judgment.

IWB/cf
cc: All defendants attorneys

THE WALL STREET JOURNAL, Friday, April 27, 1973

New Chicago Options Exchange Sued by U.S. Over Minimum Fees; Big Board Ruling Due

By WAYNE E. GREEN
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON — The Justice Department expanded its antitrust attack on fixed minimum brokerage rates by suing to bar their use on the newly formed Chicago Board Options Exchange.

And next week, the department is expected to further intensify this attack by asking a federal district court, in a case pending in Milwaukee, to order an end to fixed stock brokerage fees on the New York Stock Exchange.

The civil antitrust suit filed yesterday came on the first day of operations for the options exchange, a Chicago Board of Trade affiliate that provides the nation's first organized market devoted to the trading of a special type of securities called puts and calls.

The complaint filed in U.S. district court in Chicago asks the court to bar the options exchange from fixing the level of commission rates and brokerage fees charged by brokers trading securities options. A securities option is a contract for the right to purchase or sell shares for a set period of time at a price determined at the time the contract is entered. A contract for the right to sell is commonly referred to as a put and a contract for the right to purchase as a call.

Injunction Sought

The Justice Department said the options exchange is violating the Sherman Antitrust Act by establishing rules that "jointly fix and maintain" minimum brokerage commissions, floor brokerage rates and other fees to be charged by members for the purchase and sale of securities options.

Such rules deprive the public of the right to trade securities options on the Chicago exchange at competitively determined commission rates, the department charged. It also alleged that price competition has been eliminated in the sale of services among member brokers of the options exchange.

The lawsuit asks that the exchange and its members be permanently enjoined from fixing commission rates or other fees for brokerage services or from engaging in any other practices having a similar purpose or effect. The options exchange is the only securities option market registered with the Securities and Exchange Commission, which previously approved the fixed brokerage rate system and other rules of the exchange.

Rates Defended

A spokesman for the options exchange said: "We haven't seen the Justice Department complaint. As it has been described to us, we gather that the complaint is part of the department's effort to abolish fixed commission rates at all levels on all exchanges. We understand that there is nothing in the complaint that would prevent the continued operation of our exchange."

The options exchange "has fixed rates only below the level of $30,000, as compared with a $300,000 level prevailing on most exchanges," the spokesman said. "We believe it is appropriate, reasonable and entirely lawful, and that we will prevail in the lawsuit," he added.

The suit against the options exchange is the latest episode of the continuing controversy over application of antitrust laws to industries regulated by agencies such as the SEC. T[illegible] basic question is whether some practices, suc[illegible] as rate-fixing, are exempt from antitrust challenge because they're overseen by regulatory agencies.

Much of the controversy has centered on the New York Exchange, which traditionally has fixed rates for its brokerage firm members that have been followed by the rest of the securities industry. Until now, the Justice Department has used indirect pressure to force the Big Board away from its fixed rate system to one under which rates are negotiated between broker and customer. The department has, for example, participated in numerous SEC proceedings where it has suggested that the fixed rates may violate antitrust laws. It has also issued numerous strongly worded statements about the subject in speeches and in congressional testimony.

First Such Action

On Tuesday, the department is expected to take its strongest step to date to force the Big Board to abandon the fixed rate structure, some of which is gradually being phased out under an SEC-approved plan that will take several years. The move will come in a pending private antitrust suit against the exchange in a federal district court in Milwaukee.

The suit in Milwaukee was originally brought by Lewis D. Thill, a Milwaukee securities broker. It challenges a Big Board rule that limits sharing of commissions from transactions in Big Board-listed securities between members and nonmembers of the exchange. While the Justice Department didn't file the suit, it subsequently intervened in the case and, in effect, now is one of the plaintiffs.

On Tuesday, the department is expected to file a legal brief in the case that, among other things, will ask the court to issue an order requiring the elimination of fixed brokerage rates without delay. It wasn't immediately clear whether the brief would seek a specific date for ending fixed rates. In any event, it will mark the first time the department has sought court action against the Big Board's rate structure.

The department has challenged other fixed rate plans in court. In December 1971, it filed an antitrust suit challenging fixed rates on the Chicago Board of Trade, where commodities futures are traded. That suit still is pending, Justice Department officials said, but most of the rate dispute has been resolved in private antitrust actions against the Board of Trade.

OFFICE COPY

9163-120

340

OPINION OF HON. MORRIS E. LASKER AND ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

RICHARD A. GORDON, individually and as President of INDEPENDENT INVESTORS PROTECTIVE LEAGUE, an unincorporated association, and in behalf of the membership thereof and in behalf of all persons similarly circumstanced,

Plaintiff,

-against-

71 Civ. 1496

NEW YORK STOCK EXCHANGE, INC., AMERICAN STOCK EXCHANGE, INC. and MERRILL LYNCH PIERCE FENNER & SMITH, INC. and BACHE & COMPANY, INC., individually and as representatives of all member firms of the NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE,

MEMORANDUM

#40086

Defendants.

- -X

FILED
U.S. DISTRICT COURT
DEC 4 12 56 PM '73
S.D. OF N.Y.

APPEARANCES:

BADER & BADER, ESQS.
274 Madison Avenue
New York, New York 10016
Attorneys for Plaintiff

MILBANK, TWEED, HADLEY & McCLOY, ESQS.
1 Chase Manhattan Plaza
New York, New York 10005
Attorneys for defendants NEW YORK STOCK EXCHANGE, INC. and BACHE & CO., INC.

LORD, DAY & LORD, ESQS.
25 Broadway
New York, New York 10004
Attorneys for defendant AMERICAN STOCK EXCHANGE, INC.

BROWN, WOOD, FULLER, CALDWELL & IVEY, ESQS.
1 Liberty Plaza
New York, New York
Attorneys for defendant MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED.

LASKER, D.J.

In this action, brought by Richard A. Gordon, individually and as President of Independent Investors Protective League, against the New York Stock Exchange, the American Stock Exchange ("the Exchanges") and their member firms, plaintiff alleges several violations of the Robinson-Patman Act and the Sherman Act, to the detriment of "small investors" (those ineligible for either "volume discounts" on trades of over 1,000 shares, or negotiated rates on trades above the $500,000 [now $300,000] "break-point").

Specifically, plaintiff attacks the Exchanges' practices of making their facilities available only to members and of limiting the number of memberships; he also alleges that members have conspired with the Exchanges to fix rates for small investors at an unreasonably high level in view of the actual cost of executing a trade; that negotiated rates and volume discounts are set at unreasonably low levels in view of the actual costs of execution; and that this scheme unlawfully discriminates against small investors. In short, plaintiff makes a number of related claims, the essence of which is a broadside attack on the present commission structure of the Exchanges.

Defendants have moved for an order dismissing the

action and granting summary judgment on the grounds that the practices complained of are within the exclusive jurisdiction of the Securities and Exchange Commission, that the SEC, acting pursuant to §19(b) of the Exchange Act of 1934, 15 U.S.C. §78s(b), has been actively regulating these practices, and that, consequently, the practices are exempt from the provisions of the anti-trust law so that the court is without subject matter jurisdiction.

I.

We deal first with plaintiff's related claims regarding the Exchanges' practices of limiting the number of memberships, and denying the use of their facilities to non-members unless they pay the same rate of commission charged the general public (Complaint, Paragraph 17).

As to the first claim, plaintiff lacks standing to sue since he has not met the threshold requirement of §4 of the Clayton Act: "Any person who shall be injured in his business or property by reason of any thing forbidden in the anti-trust laws may sue therefor..." (15 U.S.C. §15). Since it is undisputed that plaintiff has never made application for membership in either defendant Exchange, he cannot be heard to complain that memberships are arbitrarily limited. See Billy Baxter, Inc. v. Coca-Cola Company, 431 F.2d 183, 187 (2d Cir. 1970),

cert. denied, 401 U.S. 923 (1971); Data Digests, Inc. v. Standard & Poor's Corporation, 43 F.R.D. 386, 387-8 (S.D.N.Y. 1967).

Plaintiff's second claim must also fail in view of the clear language of the Exchange Act of 1934 to the effect that non-members' access to Exchange facilities is limited. Section 3(a)(3) states:

> B/ "The term 'member' when used with respect to an exchange means any person who is permitted either to effect transactions on the exchange without the services of another person acting as broker, or to make use of the facilities of an exchange for transactions thereon without payment of a fee or with the payment of a commission or fee which is less than that charged the general public, and includes any firm transacting a business as broker or dealer of which a member is a partner, and any partner of such firm." (emphasis added) /B

C/The fact that the limited membership characteristic of the Exchanges inheres in their very nature has been recognized by the Supreme Court, Silver v. New York Stock Exchange, 373 U.S. 341, 350-51 (1963) and this Circuit, Robert W. Stark, Jr., Inc. v. New York Stock Exchange, Inc., 346 F. Supp. 217, 228 (S.D.N.Y. 1972), aff'd per curiam, Dkt. No. 72-1810, Slip Op. 928 (2d Cir. Aug. 28, 1972) CCH Sec. L. Rep. ¶93,607. /C

II.

Plaintiff's claims of price discrimination predicated upon the Robinson-Patman Act, 15 U.S.C. §13(a), are without merit. The Act requires that the alleged price discrimination be in connection with "commodities of like grade and quality". The authorities are clear that services and intangibles (such as stock trade executions) are not "commodities" within the meaning of the Act. Columbia Broadcasting System v. Amana Refrigeration, 295 F.2d 375 (7th Cir. 1961); Baum v. Investors Diversified Services, Inc., 409 F.2d 872, 875 (7th Cir. 1969), and cases cited therein.

III.

Plaintiff's remaining claims relating to the commission rate structure of the Exchanges pose the question whether the Exchanges, subject to SEC supervision, can fix commission rates without incurring Sherman Act liability. It is, of course, conceded by defendants that any such immunity must be provided, if at all, by the Securities & Exchange Act of 1934.

The question of the extent to which the 1934 Act exempts the Exchanges from the anti-trust laws has not been considered in this Circuit since Silver v. New York Stock Exchange, 373 U.S. 341 (1963). That case involved

a non-member broker who had secured private wire connections with certain New York Stock Exchange firms. The Exchange had approved Silver's connections on a temporary basis, but subsequently ordered them disconnected without notice or hearing. After observing that the Exchange's actions, absent justification from the Exchange Act, would have constituted a per se violation of the Sherman Act, the Silver court sought to reconcile the "antitrust aim of eliminating restraints on competition with the effective operation of a public policy contemplating that securities exchanges will engage in self-regulation which may well have anti-competitive effects in general and in specific applications." (Silver at 349.)

Noting that the Exchange Act does not give the commission jurisdiction to review particular instances of enforcement of Exchange rules, the Court stated that consequently the question of antitrust exemption did "not involve any problem of conflict or co-extensiveness of coverage with the agency's regulatory power," and that court review of the circumstances there presented "is therefore not at all incompatible with the fulfillment of the aims of the [Act]". (Silver at 359.) The court concluded that the severance of the private wires occurred under "totally unjustifiable circumstances" (Silver at 361) and that no policy of the Exchange Act

was served by denial of notice and opportunity for hearing.

In so holding, however, Silver did not specify the circumstances in which a federal district court must decline jurisdiction to avoid a possible conflict with the commission, and specifically reserved decision on the possible anti-trust immunity of exchanges where "review of exchange self-regulation [is] provided through a vehicle other than the antitrust laws...." (p. 360).

We hold that this court lacks jurisdiction to entertain an anti-trust attack on the commission structure of the Exchanges, since the fixing of commissions falls squarely within the congressional policy of exchange self-regulation embodied in the 1934 Act. Since the Act expressly directs the SEC to supervise the "fixing of reasonable rates of commission" (§19(b)(9)), we believe this is the "different case," on which Silver reserved decision, where review of exchange self-regulation is available "through a vehicle other than the antitrust laws" (Silver, p. 360).

In so holding, we are in disagreement with the Seventh Circuit, See Thill Securities Corp. v. New York Stock Exchange, 433 F.2d 264 (7th Cir. 1970), cert. denied, 401 U.S. 994 (1971), a decision to which we return later on.

We believe that while Silver quite properly punctured the umbrella of anti-trust immunity claimed by the Exchange, it did not intend Congress' unique self-regulatory scheme to be totally dampened by the continuous interference of an anti-trust court. We read Silver as holding that certain limited areas of Exchange regulation -- such as potentially anti-competitive and arbitrary conduct directed at non-members -- are properly interfered with by a reviewing court since the Act purports to regulate only the conduct of registered exchanges (and their members) with regard to the public, rather than the entire securities business. But Silver also contemplates a certain zone of anti-trust immunity in the regulatory process where there is little threat of such arbitrary and discriminatory activity.

Without venturing to describe the full contours of this immunity, we believe that the Exchange Act, as construed by Silver, left the power to fix commission rates within the exclusive jurisdiction of the Exchange, subject to commission supervision.

This construction finds ample support in the language of Silver. The court describes the Exchanges as "by their nature bodies with a limited number of members" (p. 350) with a "federally mandated duty of

self-policing" (p. 352).

> "The pattern of governmental entry ... was by no means one of total displacement of the exchanges' traditional process of self-regulation... Thus the Senate Committee Report stressed that the 'initiative and responsibility for promulgating regulations pertaining to the administration of their ordinary affairs remain with the exchanges themselves. It is only where they fail adequately to provide protection to investors that the Commission is authorized to step in and compel them to do so." S. Rep. No. 792 [73d Cong., 2d Session (1934)] at 13.

The court continues at (360-61) that:

> "The entire public policy of self-regulation, beginning with the idea that the Exchange may set up barriers to membership, contemplates that the Exchange will engage in restraints of trade which might well be unreasonable absent sanction by the Securities Exchange Act. Without the oversight of the Commission to elaborate from time to time on the propriety of various acts of self-regulation, the Exchange is left without guidance and without warning as to what regulative action would be viewed as excessive by an antitrust court.... But, under the aegis of the rule of reason, traditional antitrust concepts are flexible enough to permit the Exchange sufficient breathing space within which to carry out the mandate of the Securities Exchange Act."

The clear import of this language is that the Exchange Act sanctions certain "anti-competitive" features of the Exchanges so long as they further the policy of

self-regulation and are subject to Commission supervision, guided by the "rule of reason". Indeed, we note that Silver sets out at some length (p. 354-6, n.9) the welter of Exchange rules restricting members' relations with non-members, which were there in issue.

In holding that the manner of enforcing these rules was illegal, Silver never intimates that the rules themselves are subject to anti-trust attack, and indeed recognizes the necessity for them (p. 354-6).

The facial language of the Exchange Act gives the Exchange and the Commission the power to "fix" commission rates. Section 6(d) of the Act requires that registered exchange adopt rules "just and adequate to insure fair dealing and to protect investors;" that is, §6(d) mandates self-regulation. As Silver observes "[t]he general dimensions of the duty of self-regulation are suggested by §19(b) of the Act, 15 U.S.C. §78s(b), which gives the Commission power to order changes in exchange rules respecting a number of subjects..." (p. 352). §19(b) recites:

> "Sec. 19. *** The Commission is further authorized, if after making appropriate request in writing to a national securities exchange that such exchange effect on its own behalf specified changes in its rules and practices, and after appropriate notice and opportunity for hearing, the Commission determines that

such exchange has not made the changes so requested, and that such changes are necessary or appropriate for the protection of investors or to insure fair dealing in securities traded in upon such exchange, by rules or regulations or by order to alter or supplement the rules of such exchange (insofar as necessary or appropriate to effect such changes) in respect of such matters as ***(9) the fixing of reasonable rates of commission, intrest, listing, and other charges; (10) minimum units of trading ...; *** and (13) similar matters." (emphasis added)

We recognize that the legislative history of the 1934 Act is, perhaps typically, ambiguous as to Congress' intent regarding the Exchanges' long-standing practice of fixing commission rates. As Professor Baxter of Stanford Law School has noted:

"[t]he attention of Congress in 1934 was focused on problems of dishonesty, manipulation, and solvency, and ... no coherent congressional purpose was articulated concerning the problems of intra-industry competitive structure." Baxter, New York Stock Exchange Fixed Commission Rates: A Private Cartel Goes Public, 22 Stan. L. Rev. 675, 685 (1970).

However, Congress clearly was aware of the Exchanges' rate-fixing practices, since both House and Senate debates on the Act specifically refer to the fixing of commissions. See, e.g., 78 Cong. Rec. 8087, 8092, 8490, 8493-94 (1934). 1/

Nevertheless, however unclear the Congressional debate in 1934 may be as to the permissibility of fixing

commissions, we believe the history of Exchange rate-regulation since the passage of the Act is entitled to substantial weight. As to the proper construction of the Act, we cannot overlook the fact that Exchange regulation of fixed commissions has existed virtually unchallenged for nearly 40 years since the passage of the Act.

In the case most in point, Kaplan v. Lehman Brothers, 250 F. Supp. 562 (N.D. Ill. 1966), aff'd 371 F.2d 409 (7th Cir. 1967), shareholders of five mutual funds brought a treble damage action against the New York Stock Exchange and several stock brokerage firms claiming that the fixing of minimum commissions was a *per se* violation of the Sherman Act. The Court of Appeals affirmed an award of summary judgment for the defendants since, as the trial court noted, plaintiff's *per se* allegation was defective in light of the weighing process required under Silver. Though Kaplan is distinguishable on its facts, the court there recognized the possibility of a conflict of jurisdiction with the Commission. Its comments are applicable here since the gist of the complaint in both cases is that plaintiff paid higher rates than would have obtained in the absence of Exchange rate-fixing.

> "The plaintiffs have complained of the rates because they are fixed. If

> they had complained instead that the rates were too high, they would find no support in the antitrust laws. The remedy for a level of rates which is unreasonably high rests with the SEC. Ratemaking is a matter for which the courts are ill-equipped and accordingly a matter traditionally committed to an administrative agency. [citation omitted]. The SEC since its establishment has exercised this power of review over Exchange rates of commission, and it has inaugurated a regular system of reporting from Exchange members to furnish the necessary information.
>
> ... To leave the determination of reasonableness to the prospective decisions of the agency which is especially qualified and responsible for the general supervision of the industry will assure the intention of Congress as well as the interests of the public." (250 F. Supp. at 566).

We note that, beginning with the 1963 Special Study of The Securities Markets, the SEC and the Exchanges have undertaken intensive examination of Exchange commission structures and related matters. In 1968, the SEC initiated public hearings on the commission rate structure.

Certain rate adjustments, such as the volume discount, and the interim charge, and experiments with negotiated commissions have resulted from these activities. Most significant, the SEC recently announced, in its Release 10383 (September 11, 1973), its intention to terminate the Exchange practice of fixing minimum commissions on all securities transactions after April 30,

1975, unless the Exchange in the meantime alters its rules to the same effect. It is fair to infer that the SEC is continuing to exercise its jurisdiction actively over rate-setting, pursuant to §19(b)(9) of the Act.

Moreover, recent developments in Congress regarding the commission structure support the holding here. The Senate recently rejected amendments to the 1934 Act which would have mandated the elimination of fixed commissions within two years. See 119 Cong. Record, S11385-6, June 18, 1973. It is reasonable to infer from the proposal of these amendments that Congress did not believe fixed commissions were already illegal under the anti-trust laws, and, of course, the rejection of the amendments suggests that Congress does not now regard fixed rates as offensive to the Exchange Act or the anti-trust laws.

Finally, we come to the recent decision in Thill Securities Corp. v. New York Stock Exchange, 433 F.2d 264 (7th Cir. 1970), cert. denied, 401 U.S. 994 (1971).

In Thill, a non-member broker-dealer attacked the anti-rebate rule of the New York Stock Exchange as violative of the Sherman Act. The Seventh Circuit reversed the grant of summary judgment in favor of the New

York Stock Exchange predicated on a claim of immunity, and remanded the case to the trial court for further evidence on the effects of the anti-competitive acts complained of, the extent to which the rule was subject to actual review by the SEC, and the extent to which the anti-rebate rule was "necessary to make the Securities Exchange Act work." (Thill, at 270).

We believe that Thill is distinguishable from our case. First, the Act contains no specific directive to the SEC to supervise member-non-member relations; second, there was before the court no record of active SEC supervision in the area; third, the court thought the power to refuse to share commissions with non-members was a "weapon that can be used to injure a particular competitor" (p. 270) and the plaintiff had alleged that the anti-rebate rule had in fact been unevenly applied.

Indeed, in distinguishing Kaplan, supra - another Seventh Circuit case - the Thill court placed considerable weight on the distinction it perceived between the non-discriminatory application of fixed commission rates (at issue in Kaplan) uniformly charged to the public, and the application of rules governing rebates with non-member broker-dealers (p. 270).

We must add, if it is not already clear, that if Thill is to be read as holding that an anti-trust court

has concurrent jurisdiction with the SEC over all potentially anti-competitive practices and rules, we disagree.

For the foregoing reasons, defendants' motion for summary judgment is granted.

In view of our decision here, we do not consider plaintiff's motion for a class action determination.

It is so ordered.

Dated: New York, New York
December 3rd, 1973.

MORRIS E. LASKER
U.S.D.J.

FOOTNOTE

In Thill Securities Corp., v. New York Stock Exchange, Civ. 63-C-264 (E.D. Wisc. 1973), the post-trial brief of the United States, as intervenor, arguing the illegality of fixed commission, and the anti-rebate rule concedes that "it cannot be said that Congress intended to outlaw fixed minimum commissions in passing the 1934 Act." (Post-trial brief at pp. 8-9).

357

NOTICE OF APPEAL TO US COURT OF APPEALS
FOR THE SECOND CIRCUIT

Filed
U.S.D.C.
12/6/73
S.D.N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD A. GORDON, individually and as President of INDEPENDENT INVESTORS PROTECTIVE LEAGUE, an unincorporated association, and in behalf of the membership thereof and in behalf of all persons similarly circumstanced.

Plaintiffs

against

Civil Action
71 Civil 1496
MEL

NEW YORK STOCK EXCHANGE, INC., AMERICAN STOCK EXCHANGE, INC. and MERRILL, LYNCH, PIERCE, FENNER & SMITH, INC. and BACHE & COMPANY, INC., individually and as representatives of all member firms of the NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE.

Defendants

NOTICE OF APPEAL

PLEASE TAKE NOTICE that RICHARD A. GORDON and INDEPENDENT INVESTORS PROTECTIVE LEAGUE, the plaintiffs herein, individually and as Representative Plaintiffs, hereby appeal to the United States Court of Appeals for the Second Circuit, from a Final Order made by Hon. MORRIS E. LASKER, one of the Judges of the United States District Court for the Southern District of New York, said Order being made on December 3rd, 1973 and entered in the Office of the Clerk of the United States District Court for the Southern District of New York on December 4 1973, said Order granting Summary Judgment to the Defendants herein dismissing the Complaint, and, for that reason, refusing to consider the plaintiffs' motion for a Class Action determination, and this appeal is taken from said Order and from each and every part thereof.

Dated : December 6th, 1973

Yours, etc.

BADER and BADER
Attorneys for Plaintiffs
274 Madison Avenue
New York, N.Y. 10016

TO: CLERK OF UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

me herein, by delivering a true copy thereof to personally, deponent knew the person so served to be the person mentioned and described in said papers as the therein.
Sworn to before me, this day of 19

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK,
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 29 **day of** March **, 19**74 **at No.** 1 Chase Man. Pl/25 Bwy/1 Lib. Plaza **deponent served the within** brief **upon** Milbank, Tweed, Haley & Mc Cloy/Lord, Day & Lord/ and Brown, Wood, Fuller, Caldwell & Ivey, respective **the** attys for NY Stock Exch/ Amer. Stock Exch/ Merrill, Lynch **herein, by delivering a** ~~true~~ 2 true **copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the** attorneys for appellees **therein.**

Sworn to before me,

this 29 **day of** March **19** 74

Edward Bailey

Edward Bailey

William Bailey

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1975

ly